S. Hrg. 104–64

FEDERAL REGULATIONS: BALANCING RIGHTS, REASON AND RESPONSIBILITY

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT AND THE DISTRICT OF COLUMBIA

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

BANGOR, MAINE—APRIL 13, 1995

Printed for the use of the Committee on Governmental Affairs

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APPENDIX

FEDERAL REGULATIONS: BALANCING RIGHTS, REASON AND RESPONSIBILITY

THURSDAY, APRIL 13, 1995

U.S. SENATE,
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, AND THE DISTRICT OF COLUMBIA,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 9:37 a.m., in the Bangor City Council Chambers, Bangor, Maine, Hon. William S. Cohen, Chairman of the Subcommittee, presiding.

Present: Senator Cohen.

Staff present: Kim Corthell, Staff Director; Jennifer L. Goldthwait, Professional Staff Member; David A. Wilby, Legislative Assistant to Senator Cohen; Judy Cuddy, State Office Representative (Bangor).

OPENING STATEMENT OF SENATOR COHEN

Senator COHEN. Ladies and Gentlemen, I have a fairly lengthy statement to make, so I'll try to read it as rapidly as possible and we can move to the witnesses.

In 1993, The Wall Street Journal reported that a Montana rancher had been fined some $4,000 for endangering and violating the Endangered Species Act. A serious offense, certainly. The vast majority of Americans, I am confident, would agree that the government should protect the many and varied creatures near extinction due to the encroachment of the human race. But what was the rancher's crime? He shot and killed a grizzly bear when it attacked him on his own property. For that, he received a $4,000 penalty.

A two-person company in Florida was cited by the Occupational Safety and Health Administration (OSHA) for not having the required informational sheets on file describing the potentially harmful effects of hazardous chemicals and other substances in the workplace. What were the hazardous substances involved? The company did not have the proper forms for the Windex and Joy cleaning products found in the office.

Federal agencies have hundreds of thousands of pages of specifications for the wide variety of goods, such as pens, ashtrays and tools, purchased for the government. The specification for hammers bought by the Federal Government a few years ago was 33 pages.

The last two incidences were cited as examples in the book called "The Death of Common Sense" which recently has taken the country by storm. The book takes a look at our regulatory system and concludes that our laws are so complex and layered with unneces-

sary procedures, paperwork, and bureaucracy, that they no longer promote the public interest. The author argues that regulators no longer use "common sense" to devise answers to problems, but instead stick by inflexible rules even when they lead to the most bizarre results.

It is the bizarre results, the unfair outcomes and the unreasonable consequences of Federal regulations which have outraged the public and undermined confidence in government. These results have understandably prompted calls for government to change the way it does business. The American people are rightly demanding that the government take into account the effects that its actions have on citizens, communities and businesses. Reform of our regulatory system is critical to satisfying these demands. But our approach has to be balanced.

The Federal regulatory system is massive and affects virtually every aspect of our daily lives. There are rules and regulations that affect the food we eat, the water we drink, and the air we breathe. The Federal bureaucracy prescribes the eyewear that must be worn at work, the items that must be included in first aid kits, and the width of bathroom stalls in restaurants.

Strict regulation is often necessary and appropriate because we know that whenever something goes wrong—an airplane crashes, a water supply becomes contaminated, or a worker dies in an accident—the public looks to the Federal Government for answers. They ask "why did this happen?" or "why didn't the government intervene earlier?"

We expect government to prevent pollution, to ensure that drugs placed on the market are effective, and to inspect trains and planes for safety. The public demands these things from government and we have to give Federal agencies sufficient authority to achieve these goals. The aim of regulatory reform must be to make agencies work better, not cripple them so they cannot work at all.

We have all heard horror stories of how the enforcement of Federal regulations has led to the closure of profitable businesses or massively increased the cost of simple projects. One problem is that the Federal regulatory regime is inflexible. Agencies set health, safety, and environmental standards and then demand that they be met, regardless of the consequences to businesses and individuals. We find far too often that agencies impose substantial costs on the economy but the health, safety, or environmental benefit is slight in comparison.

We will hear about one particularly egregious example from one of the individuals, John McCurdy, who will testify later this morning. He was forced to close his smoked herring factory in Lubec, eliminating 20 jobs and an industry that ha been part of the community since the early 1800s, because the Food and Drug Administration sought to eliminate a hazard that had never arisen in the past and was unlikely to arise in the future.

Agencies have also encrusted regulations with so many procedural hurdles that they lose sight of their overall purpose and mission. Emphasizing procedure over substance enhances the power of bureaucrats that enforce the law, but contributes little to solving the problems the regulations are designed to address.

Problems also arise when unaccountable bureaucrats take the law into their own hands by applying it to instances far beyond what Congress intended in order to promote their own political agenda.

Some of you may be familiar with the case of a retired couple in Old Orchard Beach who were targeted by Federal regulators "to squash and set an example." The couple own a small parcel of land in Old Orchard. When the couple tried to sell the land in 1986, the Army Corps of Engineers ruled that six-tenths of an acre of the land had been illegally filled, despite the fact that the couple have a copy of the fill permit they received from the town in 1976 when a portion of the lot was filled.

Unable to sell the land, the couple began a eight-year battle with the Army Corps. The Corps finally reversed its decision 2 years ago and, just last December, the government agreed to pay the couple $338,000 to settle their legal claim.

We will hear this morning from two witnesses about another well-publicized case where the EPA has used the wetlands permitting process to repeatedly frustrate the State's efforts to build a much needed cargo port at Sears Island. In its 13 years battling with the EPA, Maine has spent over $19 million on this project—nearly $7 million on permitting alone.

If a proposal cannot be terminated or modified on its merits, Federal bureaucrats will sometimes stall until the project, or the cost of permitting, is no longer feasible. Federal agencies must be accountable for the regulatory decisions they make, or, in the case of the Sears Island cargo port, the delay they cause by refusing to make decisions in a timely manner.

There is little dispute that our regulatory system is in need of reform. Our goal should be to consider, in a systematic way, the economic impact of regulatory actions to ensure as best we can that the benefits society receives through the regulations outweigh the costs.

Prohibiting industry from dumping high concentrations of toxic chemicals into our water supply should be a top priority of the Federal agencies. But when agencies prohibit companies from releasing trace amounts of substances that are unlikely to have any impact on human health, we must consider whether the cost of that action is worth the perceived health benefit.

The 104th Congress has been pursuing regulatory reform on a number of fronts. Congress has passed and the President has signed landmark legislation on unfunded mandates, which will limit the ability of Congress to create new regulatory burdens on state and local governments.

The passage of this measure represents a recognition that the Federal Government cannot continue passing laws that impose huge costs on state and local governments. It also represents an acknowledgement that the Federal Government should not dictate how states and localities should spend their scarce resources.

A former state official from Lewiston once expressed his exasperation at the regulatory overload confronting his city when he said that "we are going to have the cleanest water but the dumbest kids." The city had spent so much money complying with the Federal Safe Drinking Water Act that there was not enough money left

for education. Hopefully, the Unfunded Mandates Act will provide the relief necessary so that the states and localities can once again set their own priorities rather than having them set arbitrarily from Washington.

I am also pleased that the Senate recently approved a new procedure that will allow Congress to review and rescind any major Federal regulation before it goes into effect. Congress has a responsibility to scrutinize what the agencies do. We cannot simply forget about a law, and the problems it was designed to remedy, once the law has passed. The new "congressional review" process represents a step in the right direction because it makes Congress ultimately responsible for the regulations issued under the laws that Congress enacts. This legislation will help to ensure that regulations developed by the agencies express the will of Congress, not the will of un-elected bureaucrats.

In addition, the Senate is currently considering a comprehensive package of regulatory reforms. There are a number of proposals in the Senate, but the common theme behind them is that Federal agencies should be required, before they issue a regulation, to compare the costs the regulation will impose to the benefits the regulation is expected to produce. There has been a great amount of controversy surrounding cost-benefit analysis, but at bottom, we should all be able to agree that as a basic principle, the benefits of any governmental action should exceed its costs, unless it is unreasonable or undesirable that they do so.

No matter what happens to this comprehensive legislation, the work of regulatory reform is going to continue throughout this Congress. It is necessary for us in Congress to recognize that the fault for some of the excesses that we hear of are caused by the legislation we enact rather than actions of the agencies. I expect that Congress will be reviewing many major pieces of legislation with an eye towards alleviating unnecessary procedures, lightening the paperwork burdens, and simplifying the legal requirements that individuals and businesses must meet.

Throughout this process, I am going to support a balanced approach. Right now our economy appears to be overburdened by government regulation. But we should not throw the baby out with the bath water. Notwithstanding certain excesses, the government has a legitimate interest in protecting health and safety.

When a DC–10 drops out of the sky, people always want to know "Where was the Federal Aviation Administration?" When a nuclear reactor at Three Mile Island almost melted down, people wanted to know, "Where was the Nuclear Regulatory Commission?" When an environmental disaster occurs or a body of water runs out of fish or a tanker spills oil onto a pristine shoreline, people want to know, "Where was EPA?"

Reforming the regulatory process does not mean eliminating regulations. It means finding sensible ways to ease the regulatory burden. It means determining how to achieve our common goals while minimizing the regulatory compliance costs paid by businesses, state and local governments, and consumers. It means finding better methods to track and balance the costs and benefits of regulation. It means ensuring that complying with arbitrary bureaucratic rules does not become more important than achieving our goal of

a safer, healthier, and more just society. Quite simply, it means using common sense.

The witnesses this morning will share with us their thoughts and recommendations on these matters, and I look forward to their testimony.

I want to welcome our first two witnesses. We have Les Otten, who's a member and the former President of the Maine Alliance.

The Maine Alliance is a group of business people who work to promote economic growth and job creation in Maine. The Alliance advocates a simpler more effective environmental system.

We also have with us Brownie Carson, who is the executive director of the National Resources Council of Maine. The Council is one of the foremost advocacy groups in the Nation.

Mr. Otten, Mr. Carson, would you please come forward?

TESTIMONY OF LES OTTEN,[1] FORMER PRESIDENT, MAINE ALLIANCE

Mr. OTTEN. It is a privilege to testify today alongside Brownie Carson of the Natural Resources Council of Maine (NRCM) in the context of regulatory reform and the impact of Federal regulations on Maine. In the last ten days, the NRCM and the Maine Alliance, along with many other groups, have finished two very important policy development processes at the state level, both of which were driven by Maine's efforts to escape the intricacies of Federal regulatory quagmires.

These two processes, one involving wetlands regulation and one involving Clean Air Act implementation, utilized what has become a necessary tool in Maine. Policy making by modified consensus.

In this context, after long hours of negotiations and education, both the Alliance and the NRCM were able to agree on packages which represent what is the best course for Maine, given the Federal parameters.

While I could comment at length about recent successes of State policy making by open processes and stakeholder involvement, I want to spend most of my time using these examples of state success to demonstrate some of the failures of the Federal regulatory process.

First, poorly thought through Federal regulations have put Maine in a position where Maine has to go through contortions to try to mesh with Federal mandates.

The clearest example of this is Maine's current efforts to comply with the Clean Air Act Amendments of 1990. Specifically, Maine must adopt a so-called '1915 Percent Plan" within the next few months or else the Federal Government will cripple Maine industry with sanctions.

Tuesday's final meeting of the Governor's Stakeholders' Conference made clear that the only way to meet this 15 Percent Plan without either inviting sanctions or destroying Maine's economy is to use both reformulated gasoline and motor vehicle inspection and maintenance. Both of these programs are highly controversial and dependent on emerging technologies. That is not to say that they are by definition "bad."

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[1] The prepared statement of Mr. Otten appears on page 49.

Yet what is unforgivable is that the Federal Government is not taking the heat for them; instead, our newly elected governor and the legislators are taking the majority of the blame.

The Clean Air Act on its face provides flexibility for Maine to develop a "Maine grown" implementation plan. Yet in reality the parameters are so narrow that Maine does not have a choice.

Governor King has two choices: to invite popular uprising or to invite Federal sanctions. It is really unforgivable that any Federal law would thus place all of the political damage on Maine-elected politicians when they had nothing to do with creating the legislation.

Second, even when Maine complies with Federal law, Federal law changes so often that Maine must undertake grating changes in direction in order to balance Federal law with the will of the Maine people. Again, the most clear example comes from the Clean Air Act.

The history of how Maine was dragged to the altar with the CarTest is well known. Now Maine will pay between $15 and $40 million in settlement costs. EPA will not pay. The Federal Government will not pay. Maine could pay as much as $40 per person in this state in order to rescue the state from Federal regulations which have since been rescinded in near entirety.

Even this week, as Governor King tries to sort through the "options" for a 15 Percent Plan, EPA still is unable to clearly state its rules or its reading of the law. Just yesterday DEP Commissioner Ned Sullivan worried that the Governor may need to make his recommendation based on "an indication of a presumption" stemming from an oral statement by EPA Region I Administrator John DeVillars.

It is unconscionable that the Federal Government can threaten to shut down Maine industry in the same breath that it admits that its rules are in such turmoil that it cannot answer so many of Maine's questions.

Third, the Federal process of applying laws to Maine is simply inaccessible to Maine people. The responsiveness of Federal agencies to the legitimate perspectives of Maine people is often nonexistent.

Here I turn to the current efforts to reform wetland regulation. Everyone in this room, perhaps everyone in this country, realizes that wetland laws are disastrously complicated and confusing. Even my lawyers cannot explain to me in less than four billable hours the basic tenets of wetland protection in Maine.

The basic problem is that wetlands are regulated by the Army Corps of Engineers as well as the Maine Department of Environmental Protection (DEP) as well as municipalities. Municipalities use maps; DEP asks whether the wetland is over 10 acres; and the Army Corps regulates every single wet spot but will give a wetland permit if you now enough to file the right paperwork.

In Maine we are trying to bring the DEP and the Army Corps and the local municipalities together under one permitting system, albeit only for some wetlands in part of the State. The process is exciting and will probably work. But here is the problem.

Both the state and the Army Corps must change regulations in order to make this work, simultaneously if possible. The state has

spent the last year in negotiated consensual deliberations working toward the state answer. The Army Corps, however, has held its cards close to its chest.

The most simple issue involved is "The Tier I threshold." First the Corps proposed 20,000 square feet. Then it went to 5,000 square feet. Then it considered 15,000 square feet when the business community threatened to sue.

Now its back to 5,000 square feet as a final bluff before, hopefully, everyone compromises at 5,000 square feet. The most fascinating thing about the whole process if that the Army Corps refused to hold a public hearing on its rule making this spring.

During the same month that the Army Corps was being raked across the coals on the front pages of Maine newspapers for its catastrophic administration of wetland regulations in Scarborough and Old Orchard Beach, its staff stated that public hearings are not an effective instrument by which to solicit opinions.

Instead the Corps issued an incomprehensible public notice and asked for written comments. Through this process, I cannot imagine that the Army Corps received any comment from the average Mainer who has a wetland in his backyard. Not because the average Mainer is apathetic and not because the average Mainer would ever defer to the Federal Government's judgment on wetlands, but rather because the Army Corps did not want to open itself up to the agonized frustrations of residents who should not have to understand ten pages of Greek in the Federal register prior to being worthy of the Army Corps' attention.

In summary, Maine is trying to negotiate through Federal regulations with a remarkable amount of teamwork, compromise. I do business in New Hampshire and in Vermont. And in all three States, I'm involved in the regulatory environmental process. I can categorically state that there is more cooperation between a regulatory community, business community, and environmental community existing with the state of Maine at this moment than there is anywhere else in New England. So, we're not far behind.

But I urge you to imagine what Maine would look like if all of this policy work and consensus were aiming for real advances in shaping Maine's economic and environmental future, rather than just trying to patch up failed Federal policies. What is needed from Washington generally is the following.

First, Federal policy development and regulatory controls, when they are necessary, should be put through several tests of Yankee common sense before implementation. The failure of recent Federal efforts in Maine has come when regulation has been shaped by beltway lawyers with no evidence of the common sense approach of farmers, mechanics, loggers or small business owners that have to operate under the laws. If the average Mainer cannot understand a regulation which will be applied to his or her activities, then that regulation should either be re-thought or put on hold until the voters can be educated as to its justification and implications.

Second, when Federal policy fails, as in certain aspects of the Clean Air Act, Congress should be poised to provide relief. Public faith in the Clean Air Act is collapsing. Governor Angus King may soon take extreme political risks to navigate through the Clean Air

Act. If Congress does not give Maine some breathing room on Clean Air Act implementation, I am afraid to imagine the mess we will be in 6 months from now.

I think what grates on most Mainers is that we don't make the mess, we're just being asked to clean it up. It blows in over our borders. I think we want to be good Americans and do our part. But, again, to be forced to have to pay up to $40 per resident, or $40 million, for a regulation that has since been repealed because we were smart enough to say, this is stupid, it's not our problem, is something that I think the government should reconsider.

To gain the cooperation of the state of Maine, we shouldn't have to be asked to pay $40 million.

And a final thought on—as a final personal recommendation. Less law, more speed, and clearer process. Three simple items, tenets that should be on every regulatory agency's desk when they start to write. I think we would be better served.

Senator COHEN. Thank you very much, Mr. Otten.

Mr. Carson.

TESTIMONY OF EVERETT B. CARSON,[1] EXECUTIVE DIRECTOR, NATIONAL RESOURCES COUNCIL OF MAINE

Mr. CARSON. Thank you, Senator Cohen.

Good morning. I am here representing the 6000 members of the Natural Resources Council of Maine, who, like all Maine citizens, treasure the quality of the environment in our State.

You may hear today about serious problems with the regulatory process. I hope that you will hear equally serious proposals about how the regulatory process can be improved.

With all the anti-government and anti-regulatory sentiment afoot in American today, we seem ready to overlook the fact that governmental action often serves to protect our water, air, communities, civil rights - the quality of our lives as American citizens.

I'd like to focus for just a minute on one regulatory success—the municipal wastewater treatment plants built under the Clean Water Act. These plants have transformed Maine rivers—including the Penobscot River that runs right through town—from open sewers with fumes that peeled the paint from houses, into a home for fish and wildlife and a source of joy for those who live in, visit and love our great State.

Today, we may hear about the frustrations of those wading through the process that protects our wetlands. I would like to focus for a moment on the value of wetlands.

Wetlands purify drinking water—one three square-mile swamp in Georgia has been shown to improve water quality at an estimated value of $3 million annually.

Wetlands recharge groundwater. A 2,700 acre wetland in Massachusetts recharges an aquifer at a rate of 8 million gallons per day.

Wetlands prevent floods and protect against storms. The Army Corps of Engineers found that the loss of some wetlands along the Charles River near Boston would have caused $17 million in annual flood damage.

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[1] The prepared statement of Mr. Carson appears on page 52.

Coastal wetlands are also the nursery for our decimated offshore fisheries.

There is a brand new Maine-grown wetlands success story that I would like to share with you today. Les alluded to it, and I would like to give you a little bit more detail.

Six months ago, in response to state legislation asking Maine to consider assuming the Army Corps 404 process, the State Planning Office and Department of Environmental Protection set up a task force. Under the auspices of this task force, business, development and environmental interests, the [Maine Chamber of Commerce and Industry, Maine Alliance, Maine Forest Products Council, Maine Realtors Association, Nature Conservancy, Ducks Unlimited, Natural Resources Council of Maine] joined with state and Federal officials to work through consensus to create a better process in Maine.

The four goals agreed on were: streamline the process and make it more efficient; make it simpler and cheaper for applicants; ensure equivalent or greater protection for wetlands; ensure equivalent or greater public involvement.

An agreement outlining this new process was approved by all parties last month. It actually gives more protection to the highest value wetlands by means of a rigorous review process. It has streamlined the process by tailoring it to the size of the impact and the value of the affected wetland. The costs of a permit application increases as the number of square feet affected increases. Wetlands mitigation banking is currently being worked on, and with the right criteria, will make sense.

This Maine-grown example proves that we can achieve regulatory reforms without rollbacks. In my opinion, this is the type of thoughtful, inclusive, productive work that needs to take over in both Washington and Augusta.

I wish there was an entire panel here devoted to highlighting the many ways that regulations are working today to protect our families, our neighborhoods and our natural resources. Child-proof caps on medicines, equal rights protection regardless of race, creed or color, clean air standards designed to protect our childrens' lungs—all are regulations that protect the well-being of our families and friends.

What the country does not need is a regulatory overhaul that throws the baby out with the bathwater. Today we face that very danger.

I appreciate your support for the Roth bill—S. 291—over the far more dangerous Dole bill—S. 343. I was encouraged that you and the Governmental Affairs Committee rejected some of the House bill's most destructive elements.

But, unfortunately, while the Roth bill makes the obstacle course for protective laws and rules a little passable, it still threatens to undo the safeguards for our environment, food, health and safety and consumer products. It contains a veiled attack on drinkable water, breathable air and healthy natural resources.

Why do I say that?

The bill supported by this committee contains a number of troubling elements. Today, I would like to focus on two major aspects of the bill.

One, of course, we all want regulations that make sense. To that end, the bill has mandated that a detailed cost/benefit analysis be completed for all major rules. In a statement about cost-benefit analysis as employed in The Contract with American on February 21, 1995, former Senator Ed Muskie said:

"Cost-benefit analysis can be a useful tool. In fact, our laws generally require consideration of cost today. In the environment, there is one limited exception. The Clean Air Act requires the government to use science, not cost, to determine, as accurately as good science will allow, the level of pollution the human body will tolerate. Costs are considered in choosing among options for clean-up."

"It's important to note that estimates of cost come from the polluters. History tells us business almost always over estimates control costs. Estimates of benefit involve putting a dollar value on human suffering, a dollar value on shortened lives. How much is your father worth? Less now than in his prime? How much is your daughter worth? Less if she has asthma?"

"It's uncomfortable to talk about, but this is the essence of cost-benefit analysis. These are the questions government must answer. Are individual lives and lungs worth the cost of cleaning up pollution? Or should we spend that money elsewhere and allow the individual to absorb the cost in sickness or shortened life?"

If this cost-benefit provision had been in place before the Clean Water Act of 1972:

How would we quantify the direct and indirect benefits to Lewiston and Augusta not to mention Bangor, from a river that does not smell and where tourism and economic development would be encouraged?

If this cost-benefit provision were enacted in 1995:

How would we quantify the human health benefits to the Penobscot Nation of catching and eating fish that do not contain toxic levels of dioxin?

Where would the EPA get the funds to do these analyses? What other environmental protections would not occur? What lawsuits by polluters will we see because EPA could not afford to spend millions of dollars on a cost-benefit analyses before proposing each rule, so they didn't list every conceivable "cost" to industry and therefore their findings are open to legal challenges?

Two, a second major problem with the Roth bill is its "risk assessment" provisions. The bill requires all regulatory decisions to serve the goal of "addressing the greatest needs in the most cost-effective manner." That approach sounds completely reasonable, without serious scrutiny.

Unfortunately, risk assessment is only a tool—and a flawed tool at that. It often does not protect particularly vulnerable populations like asthmatics from air pollution, or hunters and fishermen from toxic pollutants that contaminate some fish and game. I know that you're aware of the mercury alert that the Health Advisory recommends that the women of child-bearing age and pregnant women not eat fish contaminated with mercury.

In addition, risk assessments can be extremely expensive. This requirement could easily cost hundreds of millions—probably billions—of dollars. The EPA's risk assessment for one chemical—

dioxin—has already cost $6 million over a four-year span. I have not heard of any plan to provide Federal agencies with the funds necessary to conduct the risk assessments and cost-benefit analyses contemplated by this bill. If government agencies are going to be frugal with taxpayer dollars, and produce real results that protect our health and environment, this bill as written will not help them achieve these goals.

If specific regulations need work, by all means lets address them, as we have recently with regard to wetlands. But please do not use specific shortcomings that can be remedied by specific constructive actions, as the excuse to strangle the agencies that safeguard our families, our communities and our natural resources.

While we understand the pressures that you face, Senator Cohen, and the Committee from those who want to eviscerate environmental programs and standards, we ask you not to be compromised by the heat of the current political climate.

Maine people want sensible safeguards and steady progress. We fear the proposals in the current Roth bill will threaten both.

We urge you and members of the Senate not to waste scarce resources and put citizens of Maine at risk. And we urge you to address any real, recognized problems with our regulatory system in a constructive way. The Natural Resources Council stands ready to assist you in that effort. Thank you.

Senator COHEN. Thank you very much, Mr. Carson. And I'm glad we had an opportunity to have you gentlemen here this morning.

Let me ask you Mr. Carson, Mr. Otten has indicated that the business community in Maine has a greater working relationship with environmentalists and others than maybe even in Vermont and New Hampshire where you also do business.

Do you recognize that there's any need to perhaps deal with the so-called diminution of power coming down to the Federal level? There seems to be more of a mood, you know, from the general population that you can work out these types of arrangements, where you gather together the various groups; the environmentalists, businesses, consumers and others to work through a common-sense approach dealing with environmental regulation.

Is that something that can perhaps be handled more at the state level?

Mr. CARSON. You've obviously asked—in my judgment, a very complicated question.

A two-part answer: First of all, I think it's critical that we have national standards—national legislation on issues like clean air and clean water.

Clean air does not respect political borders, state borders, national borders, international borders. And clean water, obviously, flows along rivers, estuaries, and affects large geographic areas.

I think that the kind of implementation strategy that is appropriate in different geographic areas will undoubtedly vary from a safe large urban area to a more suburban and rural area, like the state of Maine.

And I think, generally speaking, in the state of Maine, we feel we have the flexibility, as is the case with the ongoing work under the Clean Air Act that Les referred to.

I think the problem comes when you get inconsistent guidance from the Federal agency that is telling the states how the Federal law must be implemented. And they're all over the map. It's very, very difficult for business and environmental and governmental people to get together and decide upon a direction.

Senator COHEN. The converse of that is that we have an attitude that one size fits all, namely, that we pass a regulation and we really don't care what the local circumstances might be. We are not concerned what kind of a burden might be imposed on the local community.

They look at communities of 50,000 or more. If you fall below that, they're all treated equally.

Mr. CARSON. You're speaking now of the Clean Air Act?

Senator COHEN. Yes. Exactly. And you have many small communities that simply don't have the resources necessary to comply. And the agency gets very inflexible under those circumstances, and they don't take into account the flexibility that's needed as far as local communities are concerned.

Is there any recognition of that? If you have a recognized standardized rule with little flexibility, then you have a lot of inequities that are placed upon the smaller communities. That's the problem that I see with one size fits all.

So, we need greater flexibility so we can take into account the needs of smaller communities who simply don't have the base to comply.

You both pointed out that the regulators are inconsistent, or that the guidelines are vague, and that causes a great deal of turbulence in the system, and that's what makes it impossible to put together the working groups.

But, if you make it so stringent that the rule is completely inflexible, then you have a lot of inequities that are also placed upon the smaller communities.

Is there some middle ground that we can try to address? Les, you were nodding as Mr. Carson said that there's a lack of consistency on the part of the regulators, and that causes problems for you and the business community.

Mr. OTTEN. If you look at the United States as an island—which probably isn't fair to do, because you can really say that the world is the island and those concentric rings are getting smaller.

But, when you get to the ring and it's the United States of American, any policy that we make should be what the entire country is trying to achieve as a balance.

What we're doing is, we're breaking the country up into—first, into 50 pieces, and then within those 50 pieces, we're creating smaller pieces within those rings, so we can end up in Scarborough, Maine, and try to solve a pollution problem that's being created in Indiana.

And that's where the logic of the process breaks down.

The Federal standard is to achieve a goal at a certain level in the country as a whole. We should then be looking at what each region needs to do in order to balance that.

Clearly, extreme measures without local input in Scarborough, Maine, leave little room for latitude. And with all of the other parameters that are involved in the decision-making process of how

a state gets its money, whether it needs dollars for transportation or doesn't, it's decision not to accept Federal dollars and keep air pollution higher—all of those things clear up on the fact that you find yourself in the southern part of the state of Maine with a policy that can't be taken to meet Maine standards, and has to be implemented.

We're the last place to the west, and most of the pollution in the state of Maine rolls in over us.

Clearly, we have to do our part. But, what's difficult for the business community is to understand how the people to the west of us are doing—are doing their part.

If you were going to change Federal policy——

Senator COHEN. That speaks to standardization.

Mr. CARSON. Yes.

Senator COHEN. You can have a standard rule that applies to every state——

Mr. OTTEN. —to every State, and then allow within each State, each municipality, a true Federal flexibility as to how it's going to achieve those goals.

I mean, right now I feel sorry for Angus King. He's in—I think he's in a no-win situation. He didn't create the problem, yet he's got to solve it. Whichever way he goes, he can either get sanctions if we get dollars, or a lot of car tests and a lot of reformulated gasoline—people are really questioning the validity of it. They haven't had a chance to participate in the process.

Senator COHEN. Is there any kind of a consensus here?

Mr. CARSON. Can I make a comment about the Clean Air Act? You asked about flexibility. And I think flexibility is very appropriate, with one truly major exception. And that's where the health of the people anywhere; that is, Aroostook County or York County, is going to be affected.

And then the consistency of the burden falls on all of us, whether it's industry, which has spent billions upon billions of dollars cleaning up smokestacks since the original Clean Air Act was passed in 1970, or automobile owners who spend about $500 on every car for the pollution-control gear that's on there.

And could be reasonably expected in the state of Maine and the state of Nevada, urban areas and rural areas, to have that pollution gear tested in some fashion—and there's wide debate on how that test should be done—so that we know that it's working, and to get it fixed if it isn't.

I don't view—the Natural Resources Council does not view some fair equitable test statewide, in the state of Maine, to make sure our cars are running as efficiently and cleanly as business is being asked to run its plants is an unreasonable burden.

And if we didn't have the EPA all over the map, and if we didn't have Representative Delay, who I believe is from Texas, and others leaning very, very hard on the EPA not to enforce the Clean Air Act, which was designed—I believe you supported it, the 1990 Clean Air Act—Senator Mitchell was, I guess, the prime author.

But, it was designed to further protect the health and well-being of American citizens.

I think we all need to ante up. It's like a poker game. If you want to play, you've got to leave a few chips on the table. And clean up

our cars, as industry has paid to clean up their smokestacks, is part of what we owe ourselves and our children, which is really where we ought to be keeping our eye.

Senator COHEN. Let me pose a question to you. Mr. Otten said less law, more speed, clearer process. That's his recommendation to me as a legislator.

You said, streamline, simplify, make it cheaper for greater public involvement.

Both of those are the same. Am I missing something here?

Mr. OTTEN. I don't think so. I think we're in—I think we may have debates as to levels, the scientific evidence, the statistics.

But, in principal, the environmental community—if I can speak for the environmental community—the environmental community's movement in this country for the last 20 years is very similar to the movement that perhaps you and I were involved in 30 years ago in protesting the war in Vietnam, we were trying to change policy in America.

The social agenda of the country was met. We withdrew from Vietnam. The social errors of the country are met, we are cleaning up our environment.

It will be catastrophic for the business community and the environmental community if we peel back the regulatory process that governs our environmental laws and take a step backwards.

If the process itself takes too long, costs too much, no one will want to take part in it, and that would bring us back into a period of chaos. Business may take advantage of that again, and——

The thing that has to prevail through all of this is that environmental regulation is good. There are standards that need to be met and kept, and need to be met and need to be improved upon.

But, at the same time, the basic tenet has to be, if business finds the process incomprehensible, the state of Maine and the people of the state of Maine don't have any input into the process, they're not going to buy in. If the time line is so lengthy that a cost-benefit analysis can't be made, then the laws will change, the environmental community won't be served, and there will be a big step backwards.

It's not a question of having the pendulum swing all the way to the left and back over to the right.

I think what Brownie believes, and I hope he believes, and I know I believe—I would like to see the pendulum stop in the middle. And instead of spending all the time debating the issues of where the pendulum should be, get along with the business of running the country with a clean environment and the business will come.

Senator COHEN. Do you think there should be any cost-benefit analysis conducted or risk assessment included in the formulation of environmental laws?

Mr. OTTEN. Common sense. Back to common sense.

Yes, there has to be. And that's a logical debate as to where those things are.

Clearly, it's difficult to say that the monetary costs which should not be incurred at some level.

But, in principle, I don't think the business community is looking for a dirty environment, just the opposite.

Klaus Nobel spoke last year in Portland at the Maine Alliance's annual meeting about the economy of the environment. And the environment itself isn't a burgeoning place to do business.

Mr. CARSON. Two brief notes, Senator Cohen. One, if there are problems with the specific regulation or law, let's address those, and not take up a very long instrument to laws that have been tailored over 25 or 30 years.

I think, secondly, there's a provision in the Roth bill that would require every Federal regulation, whether it's working well—as, for instance, the efforts to remove lead from gasoline—and I assume there's still a Federal regulation on the books regarding that—every single Federal regulation would have to be reviewed by the EPA over the next 10 years if the Roth bill passes.

If we got something that's working well, let's not spend Les's time, my time, your time, and enormous EPA taxpayer dollars to review something that's working well.

When the business community points up a serious problem, let's address it.

When the environmental community points up a serious problem, let's address it.

Senator COHEN. What about new regulations. Let's not talk about the old ones, let's talk about the new ones, the ones that may be proposed in the future.

Is that something that under no circumstances should there be any kind of a cost-benefit analysis? Because, under the Roth bill—and I don't want to get into a long debate here, and we'll talk more about it later when you come to Washington and confer with our members—it is a component. It's not decisive.

Under the Dole bill, for example, the cost-benefit analysis would be a determining factor, and would be subject to judicial appeal.

What about new regulations? Is that something that's so totally off the books? Are we saying, under no circumstances should there be any cost-benefit analysis on new regulations that may deal with the environment?

Mr. CARSON. No. But, as I read the language in the Roth bill, the requirements and the detail of the cost-benefit analysis for every major rule and, in some respects, every other rule as well, and having to add up cost and benefits to justify this—and we're going to be talking about this—and what needs to be said in terms of the certification if the cost benefit—if the regulation doesn't pass the cost-benefit test, that whole process for every single one of these rules seems to me so burdensome that that might be all an agency would ever do.

And I cannot imagine your Committee, with the Roth bill, is going to recommend a couple of billion dollars to the EPA.

So, we've got to apply the resources where they're really necessary.

Senator COHEN. I want to point out a couple of the items cited in the Death of Common Sense, to give you an example of why this whole movement of just demolishing the regulatory scheme—which I don't support—has caught fire.

The book pointed out that Mother Teresa's missionaries of charity wanted to build a shelter for the homeless in New York. And the city of New York gave them a lot of land for a dollar. They

spent about 2 years on the process of comprising the blueprints and the preparations for the shelter.

Then the city said, wait a minute, you have to put an elevator in.

And Mother Teresa said, but we don't use elevators. This is something that will not be used in this building by virtue of our customs and our habits.

And the city said, no, there must be an elevator.

It would cost another hundred thousand dollars to put the elevator in. As a result, Mother Teresa cancelled the project. We're not going to spend the money to build the shelter, we're going to use the money to feed people.

That's one case in which there could be some flexibility under those circumstances.

There's another case involving car seats. There is a regulation proposed that people who travel with young children, should put the child in a special seat, much as we have in our automobiles.

I think everyone here would agree that a child is much safer in a car seat in an airplane than being held in the parent's lap.

The problem is, the cost of complying with that regulation would be so prohibitive—the parent would have to buy another ticket to accommodate the car seat—that many parents would choose to travel by car which, admittedly, is more dangerous than traveling by airplane.

That is another case where a good idea doesn't really pay off in terms of the cost effectiveness, because the choice will be to take greater chances in driving and not to spend the extra money to go by air.

So, these are some of the examples that are being cited, giving impetus to the whole anti-regulatory movement in the country.

I guess you would both agree that we have to introduce the common sense element in the regulatory scheme.

I listened to your testimony. You both are virtually identical in terms of simpler, faster, clearer, and with greater input on the part of the public.

Les, you talked about the Army Corps. I believe they take the position that we don't want to have public hearings. It's not conducive to good sound regulation.

Now, I find that really stunning. The public hearing is a way in which we have to formulate laws.

Let me ask you, Brownie, do you find anything objectionable with the approach of the Roth bill as far as, once a law is passed and the regulations are proposed, that the Congress shall have an opportunity to review those for a 45-day period? Does that sound like something you or the group you represent would object to?

Mr. CARSON. I think the only problem with it is that—and it would be interesting to revisit this issue in four or 6 years—would be to see how much time you and other members of the Senate spend reviewing regulations, because some defective industry with a sympathetic voice in the Senate has asked this regulation or that regulation or this regulation be reviewed.

As I understand the language of the Roth bill, the time for debate is limited on this, like debate in—on other issues in the Senate——

Senator COHEN. It's like having unending debate.

Mr. CARSON. Right.

Senator COHEN. And you would never have the regulation go into effect.

Mr. CARSON. Exactly. I think you clearly have to be responsible. Now, if you want that provision to review any bill—or any regulation that's brought before you after a few years of experience, I think only time will tell.

Senator COHEN. I want to thank both of you for coming. This is part of the dilemma that we all face. Under the Super Fund Law, we spent a great deal of money to prevent the possibility that children might eat dirt at an industrial site when, in fact, the greater threat to children would be eating paint off interior walls.

And so we pass the rule which says, clean up the dirt for fear the children might eat that dirt, and we do not devote the resources necessary to deal with ingesting lead paint.

My objective and what I'm going to bring to the debate in Washington in dealing with the Dole bill versus the Roth bill, is the common sense approach. It may be that more changes need to be made.

I must tell you that what the House has proposed is a lot more punitive, much more anti-regulatory, and much more extreme in approaching this issue than the Roth approach.

It may be that the Roth approach has to be modified somewhat. But, I think it's a far better answer than what's being promoted in the House.

I have no idea what to tell you now in terms of which bill is going to come up before the Senate. I think the Roth approach is a more common sense approach, and something that perhaps we can modify and look to change on the Senate floor. By my own feeling is, it's far preferable in trying to get some handle in terms of bringing balance back into the system. You and I will continue to discuss this.

Les, is there anything you want to add to what Brownie has just said?

Mr. OTTEN. My final comment would probably be to discuss the difference between relative freedom and absolute freedom and its aspect in the business community.

I think the business community has done well to understand the needs of the environment, and insomuch as the sense of absolute freedom, one can walk through a crowded room with their arms extended and bruise and bump everyone in the room, versus relative freedom in which you walk through the room with your hands to your side.

I think the business community is interested in relative freedom, not absolute freedom.

The business community recognizes, clearly, that it is unfair to act with absolute freedom in the sense of the environment.

Any regulations that come forward in the future—there are things we don't know about. Twenty years ago, we didn't know what dioxin was. And there may be something in a Hershey bar that we will find out—you know, if you have a Hershey bar and Rice Krispies in the morning, you may suffer some fatal disease.

Something's always out there. I think it's wrong to say what or how our future regulations will be implemented. But, public input

should be a major component of any new regulation, so that the public can speak to the cost-benefit analysis.

If the public is willing to take a risk, then I think the public should be allowed to say that.

Senator COHEN. Brownie, do you disagree with public participation in the rule-making process?

Mr. CARSON. No. It's absolutely essential. It's a Maine tradition, and it certainly ought to be—I too am appalled with the Army Corps. I can't believe it.

Senator COHEN. OK. Let me thank both of you for coming forward and testifying. What I've always tried to do as an elected official is to make sure that every side is heard. This is a very important issue, and Maine is in the forefront. We have perhaps the best record on the environment of any state in the country.

And I also find it somewhat ironic that the state is now faced with a difficult choice. I met with Governor King yesterday, and he is really mulling over what he's going to do.

He needs more time, for example, to figure out whether or not the policies that have been adopted to try and deal with reformulated gas, or to deal with the auto inspection system are the right courses of action.

The state is facing severe economic sanctions by the EPA. And I believe the EPA would like to be flexible in terms of dealing with this issue. But they feel they're locked in by virtue of the regulation themselves.

Les, you got away with just four billable hours in terms of your attorney? That's extraordinary. I would think it would be at least 4 days of billable hours for interpreting the law.

It's going to present a problem with the contract that's been signed by the State. Those on the other side of that contract say, it will cost $45 million to terminate. That may be excessive.

But, nonetheless, it is a tough choice for the state to make. We are trying to work with the governor and EPA to see if there isn't a reasonable solution, that is, by giving the state more time rather than facing the sanctions. We'll see if we can't work that out.

In the meantime, let me again thank both of you, Mr. Carson, and Mr. Otten. It's not a debate between the two of you. There is pretty much common ground, it seems to me, in terms of what the objective is: simpler, clearer and faster rule making.

One of the things that's very complicated is that we have too many agencies in the same process. There's a lot of duplication. We have a process in which a business has to go through the state level, and then the same information has to be presented to the Federal departments.

I mentioned Sears Island in my opening statement. The issue is very controversial from an environmental point of view.

But I would think that after 15 years, a decision ought to have been made, yes or no. But there's been $18 or $19 million spent, and we're still no further along today than we were 15 years ago. I think the decision ought to be made, and once and for all say it can go forward or it can't go forward.

Now we're going back to looking at Mack Point. That was rejected years ago by the Army Corps of Engineers, saying that it wasn't reasonable. So now we are going back for the supplemental

environmental impact statement to go over the ground that was covered some time ago.

I frankly think that the EPA ought to be up front. If the EPA is not going to approve it, they ought to say so. But to put the community through the years and years of this toil, I think, is unfair. Hopefully, that will be resolved one way or the other, sooner rather than later.

We ought to have clearer, simpler, and more expeditious rule making in this country, so at least business can plan, and with at least some reasonable certainty that it's a green light or a red light.

But to have a yellow light flashing over the years, it seems to me is self-defeating, and I think it undermines the support for the environmental movement we have in this state, which I very much support. It's undermined when we get that kind of delay and that kind of inconsistency in what appears to be simply a long slow stall. And then people start getting angry, saying we can't support it any longer. That's what we really have to resolve.

I notice you're maintaining a noble silence, and I won't push you any further than that.

Mr. OTTEN. You ask me question, I'll answer it.

Senator COHEN. I didn't ask you a question. I just made a statement, and you and I will take it up at a later time, Les. Thank you very much for coming.

Senator COHEN. We've got to move along to our second panel this morning. Thanks very much.

Mr. OTTEN. Thank you, Senator.

Mr. CARSON. Thank you very much for the opportunity.

Senator COHEN. We're going to have somewhat of an enlarged Panel Two. I had invited the Chamber of Commerce to testify this morning.

And for whatever reason, they were unable to have a spokesperson before the Committee. So, I think it makes more sense to combine both Panel Two and Panel Three. It will be a fairly large Panel, but we have the time to accommodate all seven.

I would welcome the Maine Department of Transportation Commissioner, John Melrose; and Captain John Worth, who's the president of Maineport Towboats, Inc. and vice chairman of the Maineport Council.

Commissioner Melrose and Captain Worth's testimony is going to focus on the proposed cargo port at Sears Island.

We also have Mickey Kuhns, Director of the Division of Water Resource Regulation of the Maine Department of Environmental Protection.

Mandy Holway, who's with Woodard and Curran in Bangor.

Mr. KUHNS AND MS. Holway are going to discuss the Clean Water Act.

We also welcome Jim Fisk, City Planner and Community Development Director for the City of Westbrook.

And in addition, I will call Panel Three; Mr. John McCurdy, the former owner of the McCurdy Fish Company in Lubec; and Genie Nakell, Development Officer for the York-Cumberland Housing Development Corporation.

Ladies and Gentlemen, welcome. I think for the order of testimony, I would like to hear first from Mr. Melrose.

TESTIMONY OF JOHN G. MELROSE,[1] COMMISSIONER, MAINE DEPARTMENT OF TRANSPORTATION

Mr. MELROSE. Good morning, Mr. Chairman.

My name is John Melrose and I am commissioner of the Maine Department of Transportation.

I appreciate the opportunity to share with you today the views of the Department concerning the effect of Federal regulations on the ability of the Department to meet its obligations.

At the outset, I would like to thank you very much, and your staff, for making my job a little bit easier in the first 6 weeks on several occasions, anyway, not the least of which was the project, the Topsham Bridge.

In my comments today, I will focus on the impacts of Section 404 of the Federal Clean Water Act ("Section 404") and the Department's programs.

My remarks are presented with the caveat that this statement ought not to be misconstrued as suggesting that the Department opposes environmental regulation *per se.*

The problems that I will discuss arise from a few fundamental conditions. Those include the lack of clear regulatory standards and decision-making, the lack of meaningful time limitations in the permitting and review process and too many agencies holding jurisdiction over parts of the wetlands regulatory program. These conditions create a system in which applicants can be buffeted back and forth among the agencies interminably. Over fifteen years of experience on the Sears Island cargo terminal project illustrates the dilemma.

In that case, Federal resource agency staff adamantly oppose the project and use every mechanism and issue available to them to prevent it from moving forward. The Corps, which appears willing to make reasonable decisions on the project, is caught in the regulatory web of multiple agencies exercising competing jurisdictional powers over wetlands. Unable to free itself from its regulatory ties to the EPA, Fish and Wildlife Service, and the National Marine Fisheries Service, the Corps continually seeks compromise without success.

Despite constructive efforts by the Federal Highway Administration and Corps, the net effect from Maine's perspective is that the United States government opposes the project but is unwilling to be perceived publicly as responsible for killing it. Perhaps Maine's mistake has been not to accept the practical consequences of the Federal opposition, but to continue to work to meet identified economic development and transportation needs.

What the future holds will depend largely upon the outcome of regulatory review efforts like this one. If the present regulatory system is not reformed, the only prudent choice for the Department in the future is simply to avoid projects that involve the use of undeveloped land. That will mean accepting the fact that safety and mobility concerns for citizens and industry, together with Maine's

[1] The prepared statement of Mr. Melrose appears on page 56.

ability to compete in global and domestic markets, will be treated as secondary to the total avoidance of natural resource impacts.

To further explain the Department's areas of concern, I will summarize some of the experiences the Department has had in the regulatory process on the Sears Island Project.

The Department first sought and received state and Federal permits from the marine terminal project at Sears land in the early 1980s.

After litigation overturned the first Federal permits, the Corps granted a second permit in 1988. Litigation followed the issuance of the second Corps permit.

The Department commenced the preparation of a supplemental environmental impact statement in 1991 to address the new information relating to wetlands.

This third permit proceeding for the project was to answer a simple question about wetland impacts.

When the Department undertook the SEIS in 1991, officials from the Corps suggested that the SEIS would be a 50-page document that could be completed in 6 months.

Today, the public draft of the SEIS, consisting of over 400 pages of text and graphics, is scheduled to be released in May 1995. The SEIS process has cost taxpayers over $2 million to date.

The delays and accompanying increases and expenses to taxpayers reflect in large part the ever expanding scope of SEIS work, and endless demands for examining almost every conceivable issue and alternative.

Federal interagency meetings consistently resulted in new requests from the resource agencies for detailed studies.

While the FHWA frequently was sympathetic to the department's concerns that the demands were excessive, the Corps had difficulty in making a final or definitive statement whether a given resource agency's request was outside the scope of required information.

This left the Department to choose whether to expend the time and money obtaining the information up front, or to reject the resource agency request and risk a later determination by the Corps that the NEPA or Section 404 documentation was incomplete.

The failure to provide reliable decisions on issues also has been a problem.

At the December 1992 interagency meeting, the general guidance from the Corps and FHWA was that they were satisfied that there was no reason to perform further data-gathering or evaluation of the Mack Point location.

In January 1993 the EPA called a meeting of Federal resource agencies and the Corps to discuss the Searsport project. Following the meeting, the Corps advised the Department that a new analysis should be performed of the Mack Point location.

As a result of that change in position by the Corps, the Department embarked upon a six-month effort to develop new alternatives and new approaches that would satisfy the agency demands.

The results of that work were presented to the Federal agencies in July 1993. At the conclusion of that meeting, the Department again was given guidance by the FHWA and Corps that Mack

Point did not present an alternative and, subject to information received through the public hearing and comment process, no further work on the Mack Point location was warranted. In the fall of 1994, the EPA decided to retain a port consultant in order to study how to make the Mack Point location work as an alternative. Although the final report from the EPA consultant is not available, it appears that the report includes proposed revision or elimination of basic project components and assumptions. The present EPA effort, in a technical area outside its jurisdiction and expertise, represents another source of delay and increased costs to the taxpayers for the environmental review process for the project.

I depart for a second as a side note and indicate that the proposal that we are in fact looking at right now, which is rather incredible, is a proposal to fill over 30 acres in the intertidal and subtidal area on the Mack Point site, as opposed to alternatives on Sears Island, which would be pile-supported structures. And there are other massive environmental impacts associated with Mack Point that seem to be simply brushed aside in the chase for that particular alternative.

Another part of the problem with the regulatory program lies with differing interpretations of regulatory language. In the SEIS process, the EPA has supported the view that the 404 feasibility test for alternatives ought to be literally interpreted. That is, if an alternative is technologically possible to accomplish, the EPA views it as practicable even if it may defy common sense or be substantially more expensive or less effective than other alternatives.

While the Corps generally has not adopted the EPA's view on the issue of feasibility, the EPA's interpretation, which frequently has been seconded by National Marine Fisheries Service and Fish and Wildlife Service, has led to the substantial expenditure of time and money to address feasibility issues raised by EPA with respect to Mack Point and other alternatives.

Another area of significant difficulty is mitigation for project impacts. The idea of preserving over 700 acres of Sears Island as mitigation—which the DOT has proposed—has been rejected by the Federal Resource Agencies, although they have indicated acquisition of the island would be necessary to prevent secondary and cumulative impacts.

Other mitigation comments of the EPA and National Marine Fisheries Service variously have reflected views that mitigation for impacts on forested wetlands and marine eelgrass habitat cannot be mitigated, and that the Department should consider building an island in Penobscot Bay that replicates the natural resource conditions at Sears Island.

Senator COHEN. Is that a serious proposition?

Mr. MELROSE. When we were coming up today, I asked our counsel again, did this really happen.

Yes, this really happened.

And we have also been told through two state senators who met with the Region I head that they would want us to contemplate an extensive moratorium on development along the entire Maine coast as mitigation for moving forward in this project. Clearly that gives you some context for reasonableness.

The inability to bring the various agencies to agreement on mitigation issues arises in large part from the absence of meaningful standards in the governing statutes and regulations. The problematic difficulties I've described are caused in part by the absence of time limitations on the actions of Federal agencies, particularly the resource agencies. There is no time limit on the amount of time—excuse me. There is no limit on the amount of time the agencies can take to identify issues or submit their comments on project components.

In conclusion, the failure of the Federal Government to provide timely and reliable decisions from its regulatory agencies, individually or collectively, has broad impacts.

Issues that ought to be decided early in the process, such as project need, capacity requirements, and scope of analysis, generally are settled only until one or more of the resource agencies re-opens the matter with new objections or demands.

The economic and social cost to the public from this type of process is not supportable. The Federal Government should speak with a single voice on wetlands issues, and applicants should have clear information early in the process about the standards they must meet.

It should be possible to inform the applicant in the initial stages of the project whether it meets the standards, the regulatory standards, needs specific changes in order to meet the standards, or simply will not meet requirements even if modified.

Given the opportunity Congress now has to revisit the policies and administrative issues related to the Clean Water Act program, the Department assembled a list of ideas for consideration by the Subcommittee. The most significant of those involved, first, re-evaluation of the appropriateness of EPA's Section 404(c) veto authority.

In conversations I had yesterday with the Governor's office, we frankly go so far as to say that should be considered seriously for elimination.

Second, simplify standards for delegating wetlands regulations to States, like Maine, that have adequate regulatory programs in effect.

Three, modify the Section 404 mitigation program to implement a sliding fee—a sliding scale fee system for mitigation.

In the alternative, modify the existing regulations to provide thresholds, clear standards for more efficient processing and predictability.

And, finally, establishment of time limitations for each step of Section 404 permitting process.

Again, I would thank you for this opportunity.

Senator COHEN. Thank you very much, Mr. Melrose. Captain Worth?

TESTIMONY OF JOHN WORTH,[1] PRESIDENT, MAINEPORT TOWBOATS, INC., AND VICE CHAIRMAN, MAINEPORT COUNCIL

Captain WORTH. Thank you, Senator Cohen for being included to at least to throw some comments into the wheels of government here.

I tend to oversimplify my feeling about the Sears Island cargo port, and I wear two hats being here. As a business person involved in commercial shipping in Penobscot Bay, obviously, I have a long-term interest in how the port develops.

And also with the Maineport Council, which is about a hundred business people that are very interested in the port and seeing the economy of this area develop towards a future in which we can all afford to live here.

I've written my statements out, and I'm going to try to not repeat what others have said.

I think if any one project epitomizes the frustration that Maine business people feel about excessive Federal regulation, it is the construction of this modern cargo port on Sears Island.

In the late 1970s it became clear that this state to become full trading partners in the global marketplace—made even more so now with the GATT treaties in effect—we would need a modern intermodal cargo facility. The Maine Department of Transportation adopted a three-port plan for the State including Searsport, Eastport and Portland. The philosophy of confining development to these three ports made good environmental and economic sense and it makes even more sense to me now.

The MDOT moved forward and planned a facility on Sears Island, after examining many other alternatives. The Port took advantage of existing deep water and rail access, which is unique to Searsport, of the three ports. Portland has rail access but the deep water's not necessarily there, as the Portland bridge is concerned.

Portland has its unique advantages for being a hub and very close to many transportation systems.

And Eastport has the deep water but not the rail. So, we have a three-port plan which can be very rewarding for all of us.

Throughout the 12-year permitting saga, I believe that the MDOT has studied and restudied every issue raised by the myriad of government agencies—sometimes I feel as though I'm falling into alphabet soup.

But, there's the EPA, the National Marine Fishery Services, the Corps of Engineers, the Department of Environmental Protection, the FHA, the Coast Guard and many others that we all have to deal with on a daily basis. And the MDOT and DOT has to deal with them. And I, basically, through my efforts on the Maineport Council have just been trying to help them in any way we can.

Twice in the 12 years, the Federal review process has yielded permits. Extensive construction has already been completed. Twice construction has been halted through lawsuits from the Sierra Club. The Sierra Club skillfully uses the myriad of Federal Regulatory laws available to them to not only stall the project, but to gain reimbursement of its legal fees through the Equal Access to Justice Act.

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[1] The prepared statement of Mr. Worth appears on page 76.

Between lawsuits Maine has completed an access road, site preparation, 92 percent of the dredging is completed, initial breakwater construction is begun and $3.5 million dollars worth of steel is purchased and sits rusting at the Searsport Town Dump.

Throughout this process the State has made compromise after compromise to address the flow of Federal regulations. It redesigned the port from a six berth to a two berth design. It dramatically reduced acreage and reconfigured the site to reduce impacts on eelgrass and wetlands. Which, by the way, I feel is also very important. And Mr. Carson made some good points that the—there's no doubt about it that wetlands play an important role in the environment. But, we also have to appreciate that if you're going to build something on the waterfront, some wetlands are going to be impacted. So, what we have to do is use a common sense approach that you were discussing earlier and cut to the chafe on that particular issue.

It purchased the entire 941 acre island and promised to preserve 80 percent of it in a natural State, which I think is, you know moving towards a compromise. You know, you can't go any further than that.

A clear example of excessive Federal regulation is the EPA's interpretation of Section 404 of the Clean Water Act with regards to eelgrass. In order to preserve one acre of the eelgrass the EPA insists that the pier be constructed 300 feet from shore on pilings. This will increase construction costs by approximately $30 million and create a dock only marginally efficient.

Accompanying this expense is the months of time delay required for the MDOT to prepare responses which are usually met with further regulation, which becomes an endless circle.

Once again, I do tend to over simplify things. But one suggestion I came up with when I was thinking about coming up here was the notion of—that at some point having—and it may be too late for the Sears Island project, because we're so close to an answer now—is some type of a Federal arbitrator from the outset. This should be a person or committee and kept as small as possible. The entity would be charged with helping the state—and I use that key word, helping the state—through the various agencies concerns for a quicker response from the beginning.

The government needs to understand that time really is money.

As a tugboat captain—you need a captain to do the job. If you have seven captains, sometimes the project or the ship might go aground.

Maine voters are naturally disillusioned by the requirement to seek a third permit after 5 years. Round three has voters wondering if there will ever be an end point to this project.

A fair and expeditious decision would be a welcomed affirmation of the Federal Government's desire to work for the people of Maine and not against them.

I guess in summary, I would just say that, keeping as I see the problem with the environmental process is the timeliness. Throughout this process, two permits have been granted. The rules have changed, and the understandings of wetlands have changed.

We've gone through three EPA Region I heads since the project began, and we've gone through four governors.

Each time those people come in place, everyone has to be brought up to speed so that they can start from scratch to learn all of the things that have gone before them.

A good example of that is this Kimball-Chase report which the EPA has taken out to do now. This is basically a rehash of material. It was an effort that had taken place in 1986 and 1987, the last time the project was close to being permitted.

I just feel that the government shouldn't be spending money that way. I think it's a terrific waste of taxpayer money and not towards the ultimate goal of getting a decision; good, bad, or indifferent, but getting a decision and moving forward.

And I thank you very much for allowing me to spout off.

Senator COHEN. Thanks, Captain. Mr. Fisk?

TESTIMONY OF JAMES FISK,[1] CITY PLANNER AND COMMUNITY DEVELOPMENT DIRECTOR, CITY OF WESTBROOK

Mr. FISK. Thanks for having me here today. And I would like to preface by saying that the commission that was being put together that Brownie Carson was referring to is going to be looking at a program that the city is initiating this summer, to use as a pilot to begin to find out if there's a practical application to that theory. And the state and many agencies are going to be working with us on it.

I'm the city planner from Westbrook, Maine. And this is a brief summary of the environmental improvements project that we're undertaking, and an overview.

In January of 1994 the City received a shock from its most important resident, the S.D. Warren paper mill announced that it would no longer make plain paper and down-size the workforce accordingly. This action and the stagnant regional economy motivated the Mayor to initiate an aggressive planning effort to diversify the tax base and improve employment opportunities. Inventory and assessment of the City's resources have unveiled an inherent and direct linkage between the City's potential for growth and environmental conditions.

The City's Comprehensive Plan has designated approximately 25 percent of the City's raw land to be zoned solely for industrial uses. Necessary infrastructure of roads, water, sewer, and power were constructed in suitable areas with the best regional transportation linkage. Presently, there are approximately 50 improved industrial lots available in subdivisions or along major corridors. Within that inventory, 26 lots are assessed unbuildable due changes in the Environmental Protection Agency regulatory process.

EPA cease and desist orders, due to designation as Class II wetlands, restrict permitting and has direct economic consequences in the City's operating budget. The total loss of tax revenue is an average of $72,000 per year for the buildable land. Fully developed lots, with employment opportunities, has the equivalent potential to replace the loss and demolition of the entire S.D. Warren paper mill, one-third of the City's value.

Please find attached tabulations of tax records showing that the City has a direct loss of $22,351. and $26,560 per year in taxes as

[1] The prepared statement of Mr. Fisk appears on page 79.

a result of these lots being unbuildable because of regulatory changes in Glassworld and Saunders Park subdivisions, respectively. And the changes were not only changes in classification, but changes in permit programs that were available, and changes in definitions of wetlands and what you could do after permits on the local and state level had already been approved.

The owners requested the reclassification of their property with the tax assessor's evaluation only after years of struggle with the Federal permitting authorities.

The City has been working with owners of the Glassworld and Saunders Park industrial subdivisions over the past year to determine the mitigation needed to permit the development of their lots. Unfortunately, we cannot talk to the interested parties of the Trapper Brown subdivision, another subdivision with permit problems, because of legal macerations. No one can afford to develop these lots because of mitigation costs.

The City believes that the industrial subdivisions that are "wet" and planned as growth areas should be developed. We do not accept the Federal Government's requirement to find an alternative to filling these lots for development, because the Federal Government requirement ignores the City's long term planning and real environmental needs. The solution to this calamity is a re-thinking of the relationship between growth and environmental priorities.

We believe that the Comprehensive Plan should be the guide for development and conservation practices. We are committed to a direct linkage between growth and environmental improvements. This can be the financial basis for environmental improvements and set priorities for activities that the City should undertake to improve the environment. Again, without growth there is no financial support for these efforts.

Also, Federal mandates require that the City undertake actions in order to comply with their policy objectives. Further, the City staff has identified other potential activities that have a high priority for improving the environmental quality of our community. The City staff has begun a search for all possible sources for funding these activities. The City is dedicating tax revenues through a Tax Incremental Financing District with the nexus of this effort being a direct linkage between growth and the financial basis for environmental improvements.

The plan that the City has enacted on April 3, 1995, establishes the linkage needed to set new priorities for industry and the environment. Yet, the Federal regulations are an entrenched set of doctrines that are inflexible to the willingness of the City to solve its problems, and may prohibit the City from solving them. Because of this obstacle the City has prepared an ambitious and far reaching plan that will ultimately exceed the Federal environmental regulations. The plan sets new priorities for improving the City's environment and a means for funding these improvements. The City believes that the environmental movement needs to evolve and views the environment as part of the community, not an onerous regulatory thief.

We are working with State agencies to inventory areas that the City would improve to allow permitting of the industrial lots.

Please find attached the letter from the Director of the Land Division of DEP, regarding our pilot project.

Senator COHEN. All of those documents will be included in the record.

Mr. FISK. OK. Great.

The City Staff firmly believes that activities should improve higher value wetlands and show measurable end results.

Our recommendations to the Subcommittee is to promote flexibility to the rigid methodology of Federal regulations. Establish clear and meaningful environmental objectives. Understand and define the financial basis for environmental improvements. Base the permitting process on fair and equal treatment of individuals and respect due process. Base the standards for permitting on science and ethics, and not on subjective policy and opinion.

And in regard to the three, speed, cost and clarity, from the Maine Alliance and NRC, I would add to that, how can we, how can we exceed the status quo for environmental protection objectives that exist and go towards needed improvements that we know exist and will have measurable end results?

And what is going to be the financial basis for funding those improvements? Because, I can't go back to the council and ask them to take monies for it when we don't have the money to pay for roads and school kids.

And that relationship can only come through prosperity in the community.

Senator COHEN. Thank you very much, Mr. Fisk for your testimony.

TESTIMONY OF MICKEY KUHNS,[1] DIRECTOR, DIVISION OF WATER RESOURCES REGULATION AND MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

Senator COHEN. Mr. Kuhns?

Mr. KUHNS. Thank you, Senator Cohen. My name is Mickey Kuhns, I work with the Maine Department of Environmental Protection.

I was invited here today to provide testimony on my recent experience on the interpretation of the current rules regarding 301(h) facilities. A 301(h) facility means a municipal waste water treatment plant that has a waiver to providing a secondary (biological) level of treatment; only primary (settling) treatment is required. The 301(h) designation refers to the section of the Clean Water Act which allows this type of waiver to secondary treatment. A 301(h), or primary treatment facility is less expensive to construct, operate, and maintain while being protective of the environment.

So they're a good way to stretch your production dollars when you're building treatment facilities in Maine.

In Maine there are thirteen 301(h) facilities, which I believe is more than any other state in the county. The average Maine 301(h) facility has 360 users, the smallest has five users (Bayville) and the largest has 865 users (Bucksport). The current rules governing 301(h) facilities can require extraordinary—and that's the word I put on it, extraordinary—monitoring efforts which include in-

[1] The prepared statement of Mr. Kuhns appears on page 82.

stream, out in the river sampling, and also sediment sampling off the bottom of the river, and this can cost almost $9,000 per year every year that the facility is permitted, this sampling is not required of facilities that do provide secondary treatment. Here is where interpretation of the rule comes into play.

The rules specifically limit this extraordinary monitoring to that which is necessary to monitor the effect of the discharge. EPA interpreted this to assume that some extra monitoring would be necessary. While the rule does not specifically state so, the Maine DEP interprets the rules as allowing for an option that calls for no extra monitoring as sufficient to monitor the effect of the discharge. The Maine DEP holds this view due to the results of sampling we have done. Basically, we have seen no impact and, in fact, in the words of our chief scientist, we can't even find the discharge in the river.

As a matter of fact, there's some cases where the data has shown that the effluent in the river is cleaner than the background river.

To summarize the point, the DEP didn't want to require data that wasn't necessary. In other words, we would just be putting it in a file drawer and not looking at it. And from EPA's point of view, they saw that it was necessary to require this kind of monitoring because the rule requires it.

Senator COHEN. Do I interpret from that that the EPA officials you talked to didn't really believe it was necessary to conduct these tests based on the past records, but believe that because the rule is in existence, you had to do it?

Mr. KUHNS. We agreed—the two agencies agreed that there was no environmental benefit to gathering the data, but that's what the rule required. And this was at the cost of 13 individuals, each at $9,000 a year for July, August and September monitoring. Now it's been reduced to one. You're jumping ahead, but that's right.

It took the Maine DEP and EPA—about nine or ten months to resolve this issue, but we finally did. What we came out with was one more round of monitoring this summer, that will be done by the Maine DEP, and the expected results is that it will come out that there is no impact and there will be no more monitoring required ever, or at least extraordinary monitoring.

It's my opinion, my observation, in trying to gauge the motives behind the decision that the EPA made was that they were trying to protect the process, protect the rule. They wanted to be sure that whatever went into these permits that they issued for these facilities would be defensible in court, should anyone every decide to challenge these permits.

And since these rules just came out last summer, I can understand. They didn't want the first people through the door changing the rules, the way they interpreted them.

I think the basic sticking point here is that both the rules and the EPA is simply aren't familiar enough with these facilities.

And this is what you alluded to earlier, one size fitting all.

The 301(h) rule defines a small facility as one that serves 50,000 users or less. That's the size of Portland. All 301(h) facilities in Maine added together are about 5,000, or one-tenth of what a small facility is. And for a regulation or program that is basically written for Orange County or Los Angeles, California, it's pretty hard to downsize and apply it to a Bayville, Maine, which has five users.

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And I think that's what EPA needs. We need regulation—regulations that aren't necessarily so prescriptive, and we need—as you mentioned earlier, we need some flexibility so we can have allowances for Bucksport, Bayville, and Swan Island and places like that that are playing by the same rules that Los Angeles, California, is.

Senator COHEN. By way of commentary and not a question at this point, a couple of years ago the EPA conducted some monitoring of the air quality in Presque Isle on a particular day. I think it was during the spring months when there's a lot of dust around and a lot of trucks rolling through the streets of Presque Isle. The EPA classified the city of Presque Isle as having the same level of pollution as the city of Los Angeles.

It took us literally months to persuade the EPA that that was an unreasonable comparison, to have taken the monitoring that 1 day and classify the entire area in violation of the Clean Air Act, and placing tremendous burdens on the city of Presque Isle, and the entire surrounding communities.

It was only through heroic efforts that we persuaded them otherwise. We had a supplemental environmental impact statement done and more monitoring that the city couldn't really afford.

Mr. KUHNS. And like you just said, facilities like these small communities in Maine really can't approach the EPA when they come out with interpreting the rules and stuff. They look to the DEP to help them, and they simply can't fight—deal with the EPA.

Senator COHEN. Have you completed your statement?

Mr. KUHNS. Yes, I have.

Senator COHEN. Thank you. Ms. Holway?

TESTIMONY OF MANDY HOLWAY,[1] WOODARD AND CURRAN, BANGOR, MAINE

Ms. HOLWAY. Thank you for inviting me to testify before the Subcommittee this morning. You're going to hear some similar themes in my testimony on the saga of a small town, the town of Orland, who went through a 2½ year process with the EPA. Similar themes, but only a smaller version, and also a 301(h) community.

In late 1991 the Town of Orland retained Woodard & Curran, an environmental firm, to study the options for wastewater treatment in the community.

The study was prompted as a result of enforcement action being threatened by the Maine Department of Environmental Protection because they had houses discharging untreated sewage into the Orland River.

The study, which was completed in February of 1992, recommended a regionalized approach, rather than burdening the small number of users with the capital and operation and maintenance costs of a wastewater treatment plant.

The recommended option was to approach the Town of Bucksport, which operates a wastewater treatment plant on the Orland town line, and request that they treat Orland's wastes in their existing facility.

The estimated costs of the project were in excess of $2,000,000, which the small number of users could not afford. In March 1992

[1] The prepared statement of Mr. Holway appears on page 84.

the Town embarked on simultaneous efforts to obtain grant funding of the project while negotiating an agreement with Bucksport to accept the wastewater. Also in March of 1992, it was identified that if Bucksport wished to accept Orland's wastewater, permission might be needed from both Maine's Department of Environmental Protection (DEP) and the U.S. Environmental Protection Agency (EPA), both of which had issued discharge permits to the Bucksport facility. At that time Bucksport's EPA licenses were already in the process of being renewed.

The Town of Bucksport facility is a primary treatment plant, and therefore requires a special 301(h) waiver from secondary treatment in addition to the basic National Pollution Discharge Elimination System (NPDES) permit which all plants have. Most treatment plants in the United States are required to provide a two-step treatment process (thus called secondary treatment). Some smaller communities, such as Bucksport, have been granted waivers where it can be demonstrated that there are no adverse effects on receiving waters resulting from their discharge.

At the time of my first contact with EPA licensing staff at the Region I Office in Boston on March 11, 1992, Bucksport's plant was having compliance problems with their licensed parameters. Initial reaction was that the EPA would support the State of Maine's efforts to eliminate overboard discharges, and if Bucksport could come into compliance and demonstrate this for a period of time, it was possible for Orland to connect. This opinion was confirmed by conversations on March 25, 1992, with EPA enforcement staff who felt that once causes for past violations had been dealt with, that Bucksport would be allowed to accept Orland's wastewater.

In early April 1992 EPA informed Orland that they had received funds for a water quality study of the Penobscot River (the receiving water for the plant's effluent) and that this could delay processing of Bucksport's license, as they would want to utilize the study results to evaluate the impact of the plant's discharge on the river. They also noted at this time that EPA may not specifically have to give permission to Bucksport for Orland to tie into the plant if they have sufficient capacity within their licensed flow limits. At the end of April 1992 they reversed this position, stating that a letter from Bucksport formally requesting Orland's inclusion in their license renewal was required. EPA also stated that the license renewal would be processed after the water quality study was completed in August or September of 1992. The report was issued in October of 1992 and concluded that Bucksport's discharge had no measurable impact on the river, therefore EPA concluded that the 301 (h) waiver would be renewed.

To this point, although we were frustrated by the lack of commitment to a firm date as to when the licenses could be processed, no damage had come to the Orland project. Orland and Bucksport were still working on the intermunicipal agreement. Bucksport was adamant, however, from the outset that they would not enter into an agreement with Orland until their licenses were renewed. A portion of the necessary funding had been secured, but additional monies were not yet approved. The uncertainty over what restrictions the new licenses would contain and when EPA was going to issue them was complicating the Bucksport negotiations, because

they felt no urgency to finalize an agreement they would not sign until EPA's licensing was issued.

Contact with EPA continued through the end of 1992. On February 2, 1993, the EPA compliance division requested that Bucksport provide a list of capital improvements which would be done at their plant to promote compliance with effluent limits. A response to this request was provided by letter dated March 2, 1993. We attempted to secure a response to this letter, and a meeting of all parties was suggested by EPA. There were no available dates for EPA staff until May 11, 1993, when a meeting did take place. Because Bucksport representatives had not attended the first meeting, a second meeting was held by telephone on June 16, 1993.

On July 9, 1993, the Town of Bucksport was notified by the EPA that their schedule of capital improvement was acceptable, and that Orland's tie-in was also acceptable. bucksport continued to be in compliance with their agreed schedule and implemented all required projects in 1993.

At this point (July 9, 1993), we believed that all technical issued had been resolved regarding Bucksport's relicensing and that the license renewals would soon be forthcoming. Orland's negotiations with Bucksport were nearly resolved, and execution of the agreement was to be completed on receipt of the licenses. Further, all necessary funds to design and construct the project were in place.

As the only outstanding issue which needed to be resolved was the receipt of the EPA permits, design of the project commenced on the assumption that they would soon be issued. On September 8, 1993, I inquired as to when the permits would be issued, and was told that Bucksport was "a small discharge . . . not a high priority", and could not get any estimate of when the licenses would be issued.

Six conversations with EPA staff members between September and January of 1994, yielded similar responses. I was unable to identify who was responsible for determining the schedule of permit issuance, or even who would write the permits. Simultaneously with my efforts on Orland's behalf during this time period, Town of Bucksport staff were also attempting to persuade EPA to complete the renewal process, with similar results. On January 13, 1994, a new permit writer was identified, who told me he expected that the license would be done within a month.

Timing was becoming critical as the 1994 construction season approached and design plans were being completed. The project funding agencies (the Maine Department of Environmental Protection, the Maine Department of Community and Economic Development through a Federal Community Block Development Grant, and Farmers Home Administration) were all anxious to bid the project to contractors and commence construction. Most of all, residents of the Town of Orland were hopeful that they would soon see an end to the pollution and health risks present in their community.

On January 26, 1994, I called EPA to check on the permits' progress. I was then told that the permit process would be extended for at least three to 6 months to allow comment by the National Marine Fisheries agency because of a pending study of an endangered species, the shortnosed sturgeon, in the Penobscot

River. A February 2, 1994 letter from EPA to Bucksport confirmed the bad news, anticipating that the timeline for the process would be extended at least beyond 90 days.

Faced with the frustration of the past 2 years and with no clear date of license issuance in sight, Orland wrote letters to both (then) Representative Olympia Snowe's office and to your office, Senator Cohen, requesting assistance in expediting the process. Although staff from both offices made inquiries, it was through the efforts of Judy Cuddy at your Bangor office, who made sometimes daily contact with EPA, that the license draft was finally issued. Even with that outside pressure which made Bucksport a higher priority, a draft license was not issued until August 29, 1994. The final license was issued in October 1994.

As for the shortnosed sturgeon, none were ever found in the Penobscot River. In fact, in a June 29, 1994 letter from EPA to National Marine Fisheries, they noted that the habitat in the Bucksport area was not suitable for shortnosed sturgeon spawning due to high salinity.

As a result of the repeated delay in issuing the license, Orland missed the 1994 construction season (except for 1 weeks worth of work which was completed in November). I would estimate that engineering fees in excess of $10,000 were spent resolving this issue after all technical matters were settled.

This case study clearly illustrates how regulatory delays can impact a project. In this situation, it was not necessarily the regulations themselves which caused the delays, but their inefficient application to what should have been a simple license renewal process for a small community. Unfortunately this is not a unique situation, as NPDES license renewals can often take years. This does not always cause a hardship to existing facilities, which continue to operate under their expired licenses. For new applicants, however, particularly commercial entities who could not afford the delays which were withstood by this grant funded municipal project, such delays would be devastating.

As for recommendations as to how such delays could be avoided in the future, a combination of regulatory changes and implementation schedules would improve matters. The State of Maine has been successful in developing "Permit-by-Rule" style regulations which allow simple projects which fit specific criteria and meet certain standards to be automatically allowed, with prior notification to regulatory agencies. There is a time period after the submittal of notifications during which regulators can identify projects which they feel warrant special attention and require a more extensive application to be submitted. For full applications, a mandated schedule for processing could be required to prevent extended review processes. Staffing at EPA or other regulatory agencies would have to be sufficient to allow this to happen. I am uncertain at this time whether lack of staff or lack of accountability is the reason for present process delays.

A second idea could be to extend the license terms for NPDES licenses from the present five-year terms to seven- or ten-year licenses. EPA could reserve authority to limit licenses for plants discharging to sensitive areas to shorter time periods. As existing

rules allow, plants which are not complying with their license could be enforced upon at any time.

I thank you for this opportunity to contribute to your Subcommittee's efforts in Federal regulatory reform. I would be pleased to provide further information or assist the Subcommittee in any way as you proceed in this endeavor.

Senator COHEN. Thank you very much, Ms. Holway. Ms. Nakell? Am I pronouncing it correctly?

TESTIMONY OF GENIE NAKELL,[1] DEVELOPMENT OFFICER FOR THE YORK-CUMBERLAND HOUSING DEVELOPMENT CORPORATION

Ms. NAKELL. Thank you for this opportunity to come before you. I want to talk a little bit about issues that may be a departure from large bodies of water and wetlands. But, I would think that most of us agree that our biggest bill each month is to pay for our housing, and something that definitely impacts our lives.

York-Cumberland Housing Development Corporation (YCHDC) is a 501(c)(3) non-profit organization incorporated in 1972 in the state of Maine. Its mission is to provide and preserve decent, safe and affordable housing for low-income people in Maine. Since 1972 YCHDC has developed over 1,300 units of affordable housing in 69 developments for both low income elderly and family households. These developments include both new construction and acquisition/rehab of existing dwellings.

Nearly half of YCHDC's developments were funded in whole or in part utilizing the HUD Section 202 program. In addition, we are currently serving as a consultant on a development in Eliot, Maine, consisting of 41 units which will utilize the Section 202 Capital Advance program.

Obtaining funding through the 202 program continues to be a cumbersome process, both in terms of time and paperwork. The process has at least five phases: fund reservation, conditional commitment, firm commitment, initial closing and final closing. The submittals for each of these phases contain upwards of 40 exhibits, with many instances of duplication. An original and six copies are required for each submittal. The entire process from fund reservation to actual accessing of funds is typically a minimum of 18 months, and it is not unusual for final closings to occur years after the process is begun.

One of the problems this process creates is finding a seller of raw land or buildings who is willing to wait for this long period before he receives his money. Suitable land near services for developments for elderly households is scarce. With the added burden of finding a seller of such prime land who is willing to wait a year and a half for closing, it becomes even more difficult to develop housing for the elderly using these funds.

The long process further burdens a non-profit organization because predevelopment costs such as architectural and engineering fees must be incurred long before there is money available for reimbursement from the 202 funds. Grant monies or low/no interest predevelopment loans must be obtained, necessitating another loan

[1] The prepared statement of Ms. Nakell appears on page 90.

application and processing period. In addition, the new owner entity must deposit a Minimum Capital Investment which can be as much as $10,000 depending on the amount of the capital advance at lest a year before initial closing will occur. Tying up this amount of money for such a long period is difficult for non-profit entities and reduces their ability to develop other affordable housing during this time.

Perhaps the greatest burden is borne by the elderly households who are on waiting lists for safe, decent and affordable housing. Because these lists for housing for low income elderly in Cumberland and York counties are so long and because turnover is so low, qualified applicants are already waiting from one to often five or more years for housing. Adding a year and a half more just for the funding process makes their wait even longer.

Another HUD 202 issue is the requirement that developments in metropolitan areas consist of a minimum of 40 units. There are several small towns in York and Cumberland Counties which are nonetheless in a metropolitan statistical area; however, the need is more for 20 or 24 units, not 40.

Bring HUD loan processing in line with conventional lending procedures by reducing the number of separate submittals and shortening the processing time to 60 days after fund reservation. These changes will solve the problem of time frames for predevelopment loans and Minimum Capital investments.

Base sizes of developments on demonstrated need, not on an arbitrary minimum number of units simply because a development will be in a metropolitan statistical area.

Several of the HUD 202 properties which YCHDC developed have electric heat. Electric heat was installed as a cost containment measure required by HUD (Note: cost containment regulations are no longer in effect). Further, HUD disallowed baseboard electric heat in bathrooms where the available bathroom wall is shared with an interior wall, even though the interior wall may be unheated. Not only is electric heat expensive, it does not comfortably heat a room occupied by an elderly person, and the bathrooms in these developments are understandably cold. Other items disallowed as a result of cost containment which continue to affect the comfort and security of YCHDC's residents as well as operating costs are (1) no rain diverters over entrances; (2) no handrails on sloped walkways (since corrected at considerable expense); (3) no energy-efficient windows which met Maine energy standards; and (4) no pole-mounted exterior lighting (wall-mounted lighting provides less illumination and security).

In an effort to stabilize and reduce Section 8 and HUD 202/8 rents as well as increase the comfort of its residents, YCHDC began exploring the feasibility of heat conversions from electric to oil or gas in 1993.

These efforts were supported by the HUD Field Office. For older properties with adequate reserves, YCHDC was given permission by the Field Office to proceed with conversions so long as certain conditions were met, e.g., payback of 5 years or less and design review. For newer, budget-based developments that had not had the time or rent structure to permit the build-up of adequate reserves, conversions were problematic. On the other hand, cost-savings

were more imperative; on the other, the developments lacked adequate capital to make improvements to effect significant savings (more than 60 percent of current heating costs).

In early 1994 one of our fuel oil vendors (who happened to be on the Board of a bank with whom YCHDC had a relationship) suggested bank loans to supplement the reserves. The bank offered an average of $42,000 per development utilizing unsecured, fixed rate, five-year term loans. The loans would be repaid from savings in operations, specifically from lower fuel costs. On April 1, 1994, YCHDC wrote to HUD Headquarters (the HUD Field Office did not have authority to permit the use of rental income to repay "secondary" debt). After 30 days, the letter was followed up with a phone call. This call was transferred four times before someone requested that YCHDC fax him a copy of the letter since the whereabouts of the original letter was unknown. Two weeks later we received a response which requested additional information, most of which was contained in the original letter. This information was forwarded to the HUD Field Office as instructed, which forwarded it to HUD Headquarters, which is Manchester, along with an affirmative approval, although the HUD Field Office has indicated it did receive a directive to approve the request just last week. However, the length of time it has taken to approve the request will be costly. Since last April, interest rates have risen by 3 percent. This increase may affect the feasibility of YCHDC's proposal. Further, any savings anticipated by converting several structures at once are now lost. HUD Headquarters is now requiring review of final loan documents which will delay installation even further. The "reinvented HUD" called for more authority at the Field Office to avoid delays such as these. But, the Field Office had no authority to grant this request.

The office—our offices are part of a complex of 20 units of rental housing on 7.32 acres for low income elderly in Gorham which was developed with HUD Section 202 funds.

I think I can summarize this by saying, we are now proposing to develop additional units on the adjacent piece of land. You may be familiar with those. And we need a piece of that—HUD 202 property—to make this work for a number of reasons.

And it's really been a nine-month process of going through the Field Office, which has then gone to the HUD headquarters, to try to get permission to have a very small—I think just over one acre piece of that land.

And HUD wants $40,000 other than the $30,000 we paid originally for the entire parcel.

And I think this is a good example of when the forest gets lost for the trees—or the trees get lost in the forest, whichever way it goes.

Here we are, wanting to develop additional units with a waiting list that exceeds a hundred households, and—which would actually benefit the residents in this 202 development next door, in terms of a larger parcel to share outdoor space. And it's taken us 9 months to go back and forth, through the Field Office and HUD's headquarters, to finally get permission. Had we not been delayed by the Farmers Home Fund, as we have, this really would have held the development up considerably.

Senator COHEN. Is it a matter of consternation or consolation to you that there's now a proposal offered by Senator Dole to abolish HUD?

Ms. NAKELL. Well, this may all be moot, I realize that. But, I was asked to come, so I did.

Senator COHEN. OK. Well, Mr. McCurdy, I hate to say that we're saving the best for last or, in your case, maybe the worst for last. But, it is truly one of the worst cases that we're going to hear about today.

So, why don't you please proceed with your statement.

TESTIMONY OF JOHN McCURDY,[1] FORMER OWNER, McCURDY FISH COMPANY, LUBEC, MAINE

Mr. MCCURDY. OK. Can you hear me all right?

Senator COHEN. I can hear you fine.

Mr. MCCURDY. Thank you, Senator Cohen.Until 1991 McCurdy Fish Company was a successful family business. It had been in operation for 90 years and was the last commercial hard smoked herring company in the United States. For 20 years I was the owner and manager of this company. At the time of closing in May of 1991 McCurdy Fish Company employed 20 people in a community with a population of 1800. I will go on at this time to try to explain somewhat what we did in the hard smoked herring industry, and what we couldn't do when the FDA arrived.

Smoked herring is a processing of Atlantic sea herring. Our fish supply comes in hogshead measure, a hogshead being 17 and a half bushels or 1225 pounds.

Our annual intake of fish would be around 500 hogshead per year.

What happens is, boats come into our docking facility, where our average load of fish is around 60 hogsheads. At that time, we put a hard rubber hose in the hold of the boats, to add adequate water so the fish are all fluid. We pump these fish out of this boat and into a sluiceway in our salting shed, and they're deposited into brine tanks.

Now, we have 25 such tanks in our salting area. And they will hold an average of about four hogsheads per tank.

After these fish have all been deposited in the tanks, which come in at greater than a hogshead per minute on this pump, they have to—after that they have to be regulated to see if there's the right number in each tank. Some we take the water out, and some we put water in. It's a very important part of our process.

These fish have to be at the right consistency. If they're too tight in a tank, they won't take salt as readily. If there's not enough fish in the tank, the salt is pushed down to the bottom of the tank and it's no use, we just have to add more in the tank and the salt is very expensive.

So after this fish has been pumped out, the 60 hogshead into 15 or 16 tanks, three or four men will begin the salting process. And this is where we put in ten 88-pound bags of salt on a five-hogshead tank of fish. They do this in a manner that we put two bags on, and take a spudger, which is a long stick, or another stick at-

[1] The prepared statement of Mr. McCurdy appears on page 95.

tached to the small stick at the bottom, and the salt is pushed down into the fish. And then another two bags are put on until such time there's been eight bags pushed into five-hogshead tank of fish.

And the remaining two bags are placed on the top so that the salt is covering the entire fish.

Now, on the third day we go back in the hold tank area, which is 16 tanks, and they're spudged up again, the salt is pressed down into the fish, and an additional two bags is put on.

The fish remain in salt for 5 days. Now, on the sixth day, we take them to an area in the salting shed called the stringing area. This is a long fiberglass table to accommodate about 10 to 12 people.

At this time the fish are scooped out of these tanks, put into baskets, and wheeled to the table. At that time the men and women will take 40-inch sticks, about the diameter of your thumb, and pick up the fish, open the gill, push the sticks through the gills, out through the fish's mouth. This is done with about 20 fish to a stick.

After that, they turn around and place this stick on a wheeled cart. When the cart is filled, we have men wheel it into the smokehouse. Now, this smokehouse is an area that is quite large. We have six different compartments in these smokehouses, and each is an area of about 30 feet by 25 feet.

The slats, which we call two by threes running crossways at a height of about seven feet on the start, and 30 feet on the peak.

So, these fish are brought in. Two men work in this area. They take the fish off the cart, two sticks at a time, pass them up to a gentleman who's standing up there seven feet up over his head—or six feet, and pass them up another seven feet, until this whole house is filled with fish.

Now, the floors of these smokehouses are made of gravel. There's 12 inches of gravel in there. Once the fish are all in the house, we take smoke wood in there—it's like pulpwood, they're split and about four foot long.

So, we go in the smokehouse, we lay out 25 or 30 fires, vee shape, and three sticks to a fire. They're then covered with an ample amount of sawdust. The fireman comes in with a little stick that has kerosene on it, and he goes around and starts all 30 fires inside this room.

Now, this firing—the earliest we can get a fish processed is 4 weeks. As the fish come in, and we need more room, they're lifted up to the 30-foot level of these houses, and these fish will take probably 3 months, possibly, to cure.

Now, after this curing process and the smoking process is ceased, these fish are all golden brown and very hard. And they're taken down from the smokehouse and placed on these wheeled carts and taken into our boning area. And this is where men and women work—with a pair of scissors, they cut this fish, cut the head off, the tail, and the belly are removed at this time.

They're then placed in wooden boxes. In fact, I have one right here. This is what we put our herring in, Senator.

This box holds a hundred and fifty to 200 individual fillets. And what we do in a year's time processing is 2,400,000 individual fil-

lets. These go to markets all over the United States. In 20 years, I have produced 48,000,000 fillets at the McCurdy Fish Company, and we have had not one pound or one fillet ever returned for any problem.

Now, this has gone along for 20 years. In May 1990, Donald Stresser of the Food and Drug Administration in Augusta came to my facility. He has with him Policy No. 7108.17. This States, salt-cured, air-dried, uneviscerated fish.

It says, since 1981, there have been three outbreaks of botulism due to consumption of ready-to-eat, salt-cured air-dried, whole, uneviscerated fish, usually white fish, which may or may not be smoked.

Outbreaks of botulism due to consumption of kapchunka produced in New York City occurred in 1981, 1985, and 1987. These outbreaks resulted in 11 known illnesses and three deaths.

In the 1981 and 1985 outbreaks, the uneaten portions of kapchunka were found to have salt levels too low to preclude outgrowth of C. botulism spores.

The FDA considers ready-to-eat, salt-cured, air-dried, uneviscerated fish, which may or may not be smoked, to be a potentially life-threatening acute health hazard because of the possible presence of C. botulism toxin.

The FDA will consider taking regulatory action against any kapchunka-type product encountered in interstate commerce.

Very good.

I look at this—and this policy guide comes out 10–27–88. Now it's May 1990.

So I said to Mr. Stresser, how come the 2-year delay?

He said, possibly, he said, that you were too slow a processor, or you could read about it in the trade papers.

Now, here they're saying I'm producing a product that's potentially a life-threatening health hazard. If you people here ate one piece of my fish and it could kill you, and yet I should read about it in the trade papers.

It gets better.

So, I asked him who I could call in Washington, and he gave me the name of Thomas Gardine. I called Mr. Gardine at his Washington office. And after a long conversation, he told me that if I processed one more herring in the manner we have done for 20 years that I have been in business, that I would be in jeopardy of having them seized in the marketplace.

In June of 1990 I wrote a letter to Senator Cohen. He answered me immediately. Senator Cohen, as well as John Veroneau of his staff, worked diligently on my behalf.

Due to his intervention with the Food and Drug Administration, McCurdy Fish Company was able to remain open from May 1990 through May 1991, and he continued to try and resolve this situation for the next 2 years.

By Senator Cohen's help, they sent Donald Stresser back to my facility about eight or ten times during the summer of 1990, sometimes alone, and sometimes he had assistants with him. These fish were tested from the time they left the boat into the brine tanks on Day 1 through Day 5, they were tested in the smokehouse, and they were tested in the boning area.

If I may say at this time, that the test results came back showing, to my understanding, that there had been no botulism spores ever found in Atlantic sea herring. That the salt intake into the viscera of each fish that, if there had been botulism spores, they would have been killed while they were in the salt.

To go along with that, an article done by Brent Bowers, of The Wall Street Journal—he said, Patrick McGuinness, vice president of the Fisheries Council of Canada, an industry group, suggests that the FDA overreacted.

This type of process has been traditional from day one and still is everywhere in the world, he says.

He adds that he doesn't know of any statistical evidence indicating that smoked herring poses a botulism threat.

Now, Roy Martin, vice president for science and technology at the National Fisheries Institute, a trade group in Washington, DC, wonders whether the crackdown is justified by the three deaths in 1980.

There's a risk-benefit question here the country hasn't addressed yet, Mr. Martin says.

The only villain is the possibility of a public-health problem. When you have the word, may, in there, you can drive a truck through it.

He was asked, would you have eaten one of Mr. McCurdy's smoked fish?

Sure, Mr. Martin says. I'm sure it's perfectly safe.

Now, sometime in the fall, after these fish were tested, and I was thinking things were going well, Donald Stresser arrives. Now he has pure, salted and smoked fish establishments, good manufacturing practices.

It so states that brining must be carried out so that the temperature of the brine does not exceed 60 degrees Fahrenheit at the start of brining. If the brining time exceeds four hours, the brining must take place in a refrigerated area at 38 degrees or lower.

It also states that fresh fish, except those to be immediately processed, shall be iced or otherwise refrigerated to an internal temperature of 38 degrees Fahrenheit or below upon receipt and shall be maintained at the temperature until the fish are to be processed.

Now we've gone from a $75,000 refrigeration machine plus what it costs to hook it up—we're now talking about a hundred thousand dollars now in refrigeration equipment.

In October of 1992 to October of 1993, I've got three paragraphs from letters from the Food and Drug Administration and from Senator Cohen and also a letter that Senator Cohen sent to me.

From the Food and Drug Administration to Senator Cohen regarding what this agency is doing about imports of Canadian smoked herring which are processed in the same manner used by McCurdy Fish Company.

If we are provided or obtain evidence that herring entering the United States from Canada or elsewhere have been processed in a manner which would render the product unadulterated under the Food, Drug, and Cosmetic Act, we would prohibit entry.

In our July 1, 1992 letter we provided information on the Import Alert that provides for automatic detention of uneviscerated whole fish.

Imports that are fillets which have come from uneviscerated smoked fish are more difficult to detect. Samples collected of smoked herring fillets are examined microbiologically—which is just the same way mine have been done for 20 years, and they were found perfect and these Canadian fish are going to be found perfect—for the presence of additives, percent water phase salt, and for the viscera.

Now they claim that if Mr. McCurdy has any information on specific Canadian industry practices that would help us in our enforcement activities, we would be very interested in that information.

Now from Senator Cohen to John McCurdy. As for the importation regulations pertaining to Canadian herring, the FDA seemingly admits that it is difficult if not impossible to determine whether or not imported smoked herring was eviscerated prior to processing.

They do specifically offer you the opportunity to share with them any insight you may be able to offer regarding Canadian industry practices.

Now, May of 1993 from the Food and Drug Administration to Senator Cohen.

Currently, the FDA is working with Canada's Health Protection Branch to address the problem of fillets from uneviscerated smoked herring entering the United States.

In addition, through the Northeast Food and Drug Officials Association, which includes representatives from the Atlantic provinces of Canada, we plan to issue a letter to Canadian smokers advising that it is unacceptable to export fillets of uneviscerated smoked fish to the United States.

We are also considering requesting certificates of compliance which would include statements that the Canadian product is processed adequately to eliminate public health concerns.

Please be assured that the FDA is using whatever means possible to identify and prohibit the entry of this type of product into the United States.

Now we get back to the article in The Wall Street Journal.

It says, Thomas Billy, director of the FDA's office of seafood, bristles at any suggestion that the agency engaged in overkill.

What we're talking about is not some bureaucratic, arbitrary whimsy, but peoples' lives, he says.

After all, he notes, Mr. McCurdy had the option of buying widely available evisceration equipment.

Now, Senator, he is not the only one that can bristle.

On Wednesday this past week, I went in—I called a processor in Canada. They are processing a herring exactly as McCurdy Fish Company has done for 20 years. They have no knowledge of any regulations regarding evisceration.

Here we are, the McCurdy Fish Company has put 20 people out of work, and the Canadians are being allowed, in the last 4 years, to sell the identical product in the United States. There's been tons that have come across the border in that particular time, and it's on the shelves of all supermarkets today.

In fact, the day before yesterday, I lost five minutes at the IGA getting identical herring to the way I processed it for 20 years.

This product—I don't have any animosity for the Canadians. This product is fine. The gentleman who produces this does a fine job. The only thing I find fault with is the double standard.

In my opinion, I feel that the governmental process should judge each industry on its own merit as opposed to grouping all similar industries together.

In my case, sea herring, a saltwater fish, was compared to kapchunka, a freshwater whitefish. I would also like to see an end of the Food and Drug's Administration double standard between the United States and the Canadian processors when the exact same product is involved.

Right now I'm faced with the fact that I'm going to have to tear down my smokehouse facility at a cost of probably around $40,000. When that's gone, there will be no visible sign that a once thriving smoked herring industry ever existed in Lubec, Maine.

An industry that came to that area by a gentleman by the name of Daniel Webster in the year 1787 and stopped in May of 1991 with John McCurdy.

Thank you, Senator, for letting me speak here.

Senator COHEN. Thank you very much, Mr. McCurdy. I must say, yours is one of the most disturbing cases that I've had to contend with during my service in the Senate. I worked for several years to try to prevent Mr. McCurdy from being put out of business.

And as you can see, to sum up exactly what took place, he was in business for 20 years, employing 20 people, which is a lot of people in the town of Lubec. Never once did he have a complaint with the quality of his product. There was never any scientific evidence to indicate that there was a problem with this particular product, and yet the FDA shut him down. He didn't give the price of the equipment, but it would have cost him $75,000 for the evisceration equipment.

Your annual gross income, I suspect, was——

Mr. MCCURDY. Well, I wrote down here, $250,000. It just couldn't be done.

Senator COHEN. With a gross income of $250,000, he would have had to pay another $100,000 for equipment, and he couldn't afford it.

So, in essence, they shut him down with no scientific evidence to support it; nonetheless, allowing a Canadian company, doing exactly the same thing he had been doing for 20 years, using the exact same process he had been using, to import its product into the U.S.

And so our markets are, not flooded, but at least supplied with Canadian salted herring.

I think it's a real tragedy of circumstances. But, once again, it demonstrates, I think, symptomatically, what we've been talking about here today.

I've been to Mr. McCurdy's place of business.

Apparently the building is still there, but you are now required to tear it down?

Mr. MCCURDY. I'm not required to, but for tax purposes—there's been tax on that for 4 years now, with no sign of developing it, so——

Senator COHEN. Again, it crystallizes the nature of the problem we're facing. That's why this book, "The Death of Common Sense," has been not only written, but has been on the best seller list, because you have rules that are being implemented such as we've heard about from Mr. McCurdy. And it adds to the level of frustration each one of you has expressed here today.

Ms. Holway, I understand that Orland is not fully tied in yet to the Bucksport system; is that correct?

Ms. HOLWAY. No, they're not. We just started construction a few weeks ago because, by the time we got the permit in place, we were able to work for about a week before the weather conditions precluded us from doing anything significant.

Senator COHEN. One of the complaints that I hear is that when many people say we need a more timely, expedited decision-making process, it's really just a cover for trying to gut environmental regulations.

In this particular situation, it's just the reverse. By virtue of a delay, we have actually exposed our people to greater health risks.

Ms. HOLWAY. Certainly that's the case. It's going to be delayed a year, and now we've got another whole year of untreated discharge that's going into the river.

And the shame of it is that the technical issues were resolved back in 1993. There's no reason why we couldn't have it issued in 1994. And EPA staff assured me all along that that would happen.

And, as I mentioned, I don't know that it's necessarily a regulatory issue, but just a lack of anyone processing it in an efficient manner.

Senator COHEN. First of all, you have the EPA, which has the primary jurisdiction. And then you have other agencies which have secondary jurisdiction. In this case, it was National Marine Fisheries.

Ms. HOLWAY. And the issue arose completely out of the blue, after being told that everything was going to be in place, and we thought we were going to get licenses in time for beginning it in 1994. And it just delayed it 6 months, and EPA and National Marine Fisheries admit themselves that, in retrospect, there was no issue.

Senator COHEN. It's a loss of time and a waste of money, and certainly didn't contribute to the health, safety and welfare of the citizens.

Captain Worth, you're a tugboat captain?

Captain WORTH. That's right.

Senator COHEN. You are familiar with Mack Point. What is your assessment in terms of the ability to utilize Mack Point as a substitute for the Sears Island cargo port?

Captain WORTH. In several of the reports that have been done in the past, and the current one which was undertaken by Kimball-Chase, when they were up here and rode with one of the pilots, who actually controls the ships and the tugs—certainly it's the pilots that control the lateral motion of the ship.

It was discussed with those people of Kimball-Chase that navigation—if you were to take a look at the area and decide where you wanted to put a marginal wharf, that would be—take advantage of current, not be subject to the prevailing winds, and would be least impacted by the ledges that are there, you would not pick Mack Point.

I mean, Mack Point has two finger piers that come out which are, basically, heading out to sea. And those work fine for the discharge of oil, but not for the discharge of dry cargoes.

So—I'm probably confusing it somewhat. But, the feeling was, you can build a port anywhere and you can make a ship go in there, but why would you do it in the least effective, least efficient way? Why would you do it in a way that was so expensive that it probably would not occur?

The dredging issue alone on Mack Point, by my understanding, is one which is insurmountable. And even though people end up going back to that point, they cannot get over the fact that it's 38 times more dredging than has already been accomplished then would be needed at a port on Sears Island.

Sears Island is a deep water access, and that's why it was picked. It's also nicely placed for the prevailing breezes that makes ship docking a safe and effective maneuver.

Senator COHEN. As a matter of fact, the Federal Highway Administration and the Army Corps rejected the Mack Point back in 1988 as a feasible alternative, did they not?

Captain WORTH. Yes, that's correct. That's my understanding.

Senator COHEN. And here we are in 1995, and the EPA is saying, go back and file a supplemental environmental impact statement.

I think you indicated Commissioner Melrose, that $2 million is involved for the supplemental process?

Mr. MELROSE. Yes. The amount of money we spent just trying to work the paperwork is—it's in the $2 million-dollar range.

And the very frustrating aspect of Mack Point is, we need 90 acres to operate a feasible facility and to have growth opportunity.

The EPA proposal that's being put on the table at Mack Point is now down to 60. But, ironically, half of that is generated by fill in the intertidal and subtidal zone, which is what we've been told all along is a complete no-no as far as what is operable over on the Sears Island side.

And as John correctly points out, we've got major dredging problems, perhaps 2 million cubic yards versus 20,000 cubic yards on Sears Island, and extensive wetland damage on Mack Point.

And beyond all that, they just finally discovered that we don't have the ease to move Sprague Energy Company around willey-nilley, and so there's significant dislocation problems associated, and some legal problems, too, once we—if we get forced in that direction.

Senator COHEN. Have you been apprised of the four-to-one ratio as far as mitigation for wetlands that you're now required to meet?

Mr. MELROSE. Yes. And——

Senator COHEN. Is that unique? Because my understanding is the law required a one-to-one mitigation.

Mr. MELROSE. I would have to defer to some people here who are more knowledgeable in that area. But, it's my understanding that

we are pushed up to a four-to-one standard and I think it depends on the—it depends on the quality of the wetlands, and also the negotiating process.

But, it's an area where you're just left out there without clear guidance, and so it's one of those question marks that you get tossed back and forth between agencies, and no clear decisions are made.

Senator COHEN. Captain Worth, I guess the people of Waldo County, especially Searsport and Belfast, all support the cargo port?

Captain WORTH. Yes, I think so. I think it's fair to say that—as I said in my testimony, people are extremely frustrated by this, the length of this process, and eventually support is probably going to erode if we don't get moving forward, because it's definitely a project that needs to be—timely. It's a competitive world and it's a timely world, and if you don't develop it and get it going, then we've fallen into the cracks of not being competitive.

Senator COHEN. Let me tell you, it's been very frustrating for me and for all of those who have been involved in this process. I wanted to indicate before that it's not a matter of partisan politics at all.

Brownie Carson indicated that Senator Mitchell has been one of the leading Senators responsible for reauthorization of the Clean Air Act.

But, the fact is, we've had bipartisan support for the project. Senator Mitchell supported it. Governor Brennan supported it. Governor McKearnen supported it. I assume now Governor King supports it.

So, we've had not a partisan advocacy of this project, but rather broad political support for its construction, and yet we've been waiting 15 years now.

I was accused somehow of intervening inappropriately by one newspaper in the State. And frankly, I was surprised that I'm apparently required to give up my First Amendment rights.

During a meeting that took place in Washington, which all of the officials were there for both the state and Federal agencies, I expressed a rising sense of frustration when it was then decided that perhaps Maine officials should be prosecuted for concealing the presence of wetlands on Sears Island.

It struck me as somewhat ironic, since we had officials from the EPA regional office in Boston come up and do the same tour of that island, and yet there was no talk about prosecuting any Federal officials.

It struck me that it was just another example of opposition coming from the regional office, that they were not going to allow this project to go through.

So, I expressed a level of frustration. About a year later, I read about it in a paper in Maine, where I allegedly had somehow interfered by expressing my personal opinion on the project, and was somehow intervening in the judicial process in suppressing the criminal prosecution of any officials.

It was a long piece, about 7,000- or 8,000-words. I read it with some interest. And I offered to write a letter to the editor, and was told that I would be confined to 325 words.

I said to them, 325 words to respond to a 9-or 10,000-word piece? They said, we're going to treat you just like we treat everybody else.

I said, but you're not treating me like you treat everybody else, you're treating me different. How many other people do you write 10,000 words about, negatively, and virtually accusing me of doing something inappropriate when, in fact, I only expressed an opinion. All you get is 325 words, they said.

So, I decided to not even bother to respond.

Frankly, I felt at the time—this is more than 2 years ago now—that the state should finally say, we give up. No matter how much money we spend, and no matter how many supplemental environmental impact statements we conduct, it's simply not going to happen because of the determined opposition from the regional EPA office.

That's still my opinion. I hope I can be proven wrong. I'm awaiting anxiously the results of this supplemental environmental impact statement, but I'm frankly not terribly optimistic about it, given the fact that we've been down this road before.

Not only was Mack Point rejected by the Army Corps and by the Federal Highway Administration, but the scale of the project had to be so reduced that it's not even economical.

They're asking you to put forward a project which doesn't make common sense for the region.

I will do my part and wait for the state to complete its supplemental environmental impact statement. But, I must say, given the past track record, unless there's going to be a change of attitude on the part of the regulators, I'm not optimistic about it.

I think we ought to be forthright with the people and say, this is the situation we find ourselves in. There is opposition. And we have to make it clear to people that it's the regional EPA office that's absolutely opposed to the project. I'm not sure if it was you, Captain Worth, or Mr. Melrose who said that they don't want to accept the responsibility for killing the project.

Mr. MELROSE. I did.

Senator COHEN. If that's the opinion, then it seems to me that the EPA ought to be willing to say, that's our decision, and be held accountable for it.

But, to simply delay the process and to suggest alternatives which really don't make common sense or dollar and cents to me is a waste of taxpayers' money, and only contributes to the level of public frustration.

What we need is a decision and not more delay.

What I take away from this hearing are the common themes of timeliness, single voice, clearer standards, simplification. It cuts across virtually everybody who testified here this morning, from Westbrook, to Orland, to Bucksport, down to Mr. McCurdy's operation—which is no longer an operation.

I am hopeful that by this kind of testimony being brought forward that it will contribute to the debate that's about to take place on the Senate floor. The first two witnesses, I think, were both excellent in pointing out that business has an interest in seeing that we have a strong environment.

Now we turn to Captain Worth and all the people in the greater Searsport, Waldo County area. The environment is critical to their livelihood. All of them believe in having a strong, clean environment. They live there. It's a beautiful place, and they want to protect it. They want to continue to enjoy the quality of life that we have in Maine.

But, it seems to me that they ought to be given at least some voice in developing projects which will improve the prosperity of the region without unduly compromising the integrity of the environment. This is one of the problems, to try to strike the right balance, and I don't believe balance has been shown in this particular case.

And that's not my personal opinion. It was the opinion of Senator Mitchell and that of Governor McKernen and now Governor King.

Your testimony will be helpful as I go forward to the debate. And I was interested to hear Mr. Carson speak about the cost of cost-benefit analyses, and it's a valid point.

But, it seems that you have to have some balance in the equation as we go forward with regulations to find out whether they're serving the objective for which they were intended.

I must tell all of you in the audience, as well as those who testified, that we legislators are not experts in very many things. Most of us depend upon having the benefit of the common sense and common wisdom of the people whom we represent. You, after all, are the ones that we are elected to represent, and we need the benefit of your expertise.

I got quite a demonstration here this morning, Mr. McCurdy, on your process. I think I know a little bit about it. I know how to make bread and rolls, but I need an expert like you to tell me how you smoke fish.

And I could go down the list. We depend upon you as the experts in the community to apprise us of the nature of your business and your interest and your expertise, and we take that to the debate.

We pass laws, and most of them, if not all of them are well intentioned. We pass the laws, and then we basically forget about them. We hand the law over to the Executive Branch, as we're required to do, and as we should do.

When I say bureaucrats, I don't mean to use that in a pejorative sense. We need bureaucrats. We need a bureaucracy. We need experts in the various agencies to look at the laws that we've passed and determine how to implement them. How do we write regulations that will carry out these laws that have just been passed by the elected officials in Congress.

Most of us are on to the next law, to the next hearing, to the next issue, and we don't pay much attention to what takes place with regulations, until such time as we find it out that they're not working, or they seem to be cumbersome, or simply unreasonable, or that those who are actually enforcing them possess the kind of arrogance that would not be tolerable on the part of elected officials.

Day after day we hear more and more examples of the autocrats who threaten to come in and shut you down, and act like totalitarians.

They don't have to be responsive. They're not elected, and they don't have to be accountable.

So you've got to come to us and say, Senator Cohen, I've got a big problem. You passed a law, or you supported a law. This is how it is being interpreted, and I'm about to go out of business.

And that's when we come back and say, it doesn't sound reasonable to me, can't we change it. And the answer is, it takes a long time to change something that's already put in place.

As I indicated in my opening statement, we don't want to get rid of regulation. Regulation is important; important for our health, safety and welfare.

But, we have to have an infusion of common sense in terms of the implementation, even in the writing of the rules. That's why the legislation pending in the Senate is important. I know it's controversial but at a minimum we'll have an approach, like the Roth approach, that once a bill has been passed, and the regulations become final, they then will come back to the Congress and we will have a period of 45 days in which to examine them.

It will give us an opportunity to look at the regulations and make an evaluation as to whether or not it's a reasonable proposal. We don't do that now. We may have to spend a great deal more time in looking at these regulations to satisfy ourselves.

It seems to me, in talking to the first panel, they agreed, virtually, on everything; simplify the process, streamline the process, eliminate the duplication of effort. To go back to the words I've written down—Yankee common sense, streamline, simplify, make them cheaper to comply with, and greater public involvement.

That's really what we're doing today, getting greater public involvement and response. I want to thank all of you for coming forward. Your printed statements will all be included in the record. And any additional comments you wish to submit following this hearing will also be a part of the record. I would say in the next few weeks we'll be debating this issue on the Senate floor. The House has already passed the measure. I suspect that the House version will not be supported by the President, so we're going to try to work out something that is supportable by both Democrats and Republicans and, hopefully, by the President of the United States, taking into account the need for regulations, particularly in the field of the environment, health, safety and welfare, but also taking into account the need for some common sense. And you've all contributed to a better understanding of the issues.

So with that the Committee will now stand in adjournment.

[Whereupon, at 12:20 p.m., the Subcommittee was adjourned.]

APPENDIX

The Maine Alliance

120 Exchange Street • P.O. Box 189 • Portland, ME 04112 • (207) 774-1001 • Fax (207) 775-6716

Testimony of Les Otten of The Maine Alliance

Before the United States Congress's Subcommittee on Oversight of Government Management and the District of Columbia

Bangor City Hall, Bangor, Maine

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<Introduction>

<General Remarks>

<Other Issues>

It is a privilege to testify today alongside Brownie Carson of the Natural Resources Council of Maine (NRCM) in the context of regulatory reform and the impact of federal regulations on Maine. In the last ten days, the NRCM and the Maine Alliance, along with many other groups, have finished two very important policy development processes at the state level, both of which were driven by Maine's efforts to escape the intricacies of federal regulatory quagmires. These two processes, one involving wetlands regulation and one involving Clean Air Act implementation, utilized what has become a necessary tool in Maine: policy making by modified consensus. In this context, after long hours of negotiations and education, both the Alliance and the NRCM were able to agree on packages which represent what is the best course for Maine, given the federal parameters.

While I could comment at length about recent successes of State policy making by open processes and stakeholder involvement, I want to spend most of my time using these examples of state success to demonstrate some of the failures of the federal regulatory process.

First, poorly thought through federal regulations have put Maine in a position where Maine has to go through contortions to try to mesh with federal mandates.

The clearest example of this is Maine's current efforts to comply with the Clean Air Act Amendments of 1990. Specifically, Maine must adopt a so-called "15% Plan" within the next few months or else the federal government will cripple Maine industry with sanctions. Tuesday's final meeting of the Governor's Stakeholders' Conference made clear that the only way to meet this 15% Plan without either inviting sanctions or destroying Maine's economy is to use both reformulated gasoline and motor vehicle inspection and maintenance. Both of these programs are highly controversial and dependent on emerging technologies. That is not to say that they are by definition "bad." Yet what is unforgivable is that the federal government is not taking the heat for them; instead the governor and the legislators are taking the heat. The Clean Air Act on its face provides flexibility for Maine to develop a "Maine grown" implementation plan. Yet in reality the parameters are so narrow that Maine does not have a choice. Governor King has two choices: to invite popular uprising or to invite federal sanctions. It is unforgivable that any federal law would thus place all of the political damage on state politicians.

Second, even when Maine complies with federal law, federal law changes so often that Maine must undertake grating changes in direction in order to balance federal law with the will of the Maine people. Again, the most clear example comes from the Clean Air Act. The history of how Maine was dragged to the altar with CarTest is well known. Now Maine will pay between $15 and $40 million in settlement costs. EPA will not pay. The federal government will not pay. Maine could pay as much as $40.00 per person in this state in order to rescue the state from federal regulations which have since been rescinded in near entirety.

Even this week, as Governor King tries to sort through the "options" for a 15% Plan, EPA still is unable to clearly state its rules or its reading of the law. Just Tuesday DEP Commissioner Ned Sullivan worried that the Governor may need to make his recommendation based on "an indication of a presumption" stemming from an oral statement by EPA Region I Administrator John DeVillars. It is unconscionable that the federal government can threaten to shut down Maine industry in the same breath that it admits that its rules are in such turmoil that it can not answer so many of Maine's questions.

Third, the federal process of applying laws to Maine is simply inaccessible to Maine people. The responsiveness of federal agencies to the legitimate perspectives of Maine people is often nonexistent. Here I turn to the current efforts to reform wetland regulation. Everyone in this room, perhaps everyone in this country, realizes that wetland laws are disastrously complicated and confusing. Even my lawyers can not explain to me in less than four billable hours the basic tenets of wetland protection in Maine.

The basic problem is that wetlands are regulated by the Army Corps of Engineers as well as the Maine Department of Environmental Protection (DEP) as well as municipalities. Municipalities use maps; DEP asks whether the wetland is over ten acres; and the Army Corps regulates every single wet spot but will give a wetland permit if you know enough to file the right paperwork. In Maine we are trying to bring the DEP and the Army Corps together under one permitting system, albeit only for some wetlands in part of the state. The process is exciting and will probably work. But here is the problem. Both the state and the Army Corps must change regulations in order to make this work, simultaneously if possible. The state has spent the last year in negotiated consensual deliberations working toward the state answer. The Army

Corps, however, has held its cards close to its chest.

The most simple issue involved is "The Tier I threshold." First the Corps proposed 20,000 square feet. Then it went to 5,000 square feet. Then it considered 15,000 square feet when the business community threatened to sue. Now its back to 5,000 square feet as a final bluff before, hopefully, everyone compromises at 15,000 square feet. The most fascinating thing about the whole process is that the Army Corps refused to hold a public hearing on its rulemaking this spring. During the same month that the Army Corps was being raked across the front pages of Maine newspapers for its catastrophic administration of wetland regulations in Scarborough and Old Orchard Beach, its staff stated that public hearings are not an effective instrument by which to solicit opinions. Instead the Corps issued an incomprehensible public notice and asked for written comments. Through this process, I can not imagine that the Army Corps received any comment from the average Mainer. Not because the average Mainer is apathetic and not because the average Mainer would ever defer to the federal government's judgment on wetlands, but rather because the Army Corps did not want to open itself up to the agonized frustrations of residents who should not have to understand ten pages of Greek in the federal register prior to being worthy of the Army Corps' attention.

In summary, Maine is trying to negotiate through federal regulations with a remarkable amount of teamwork, compromise, and genuine commitment to our future. But I urge you to imagine what Maine would look like if all of this policy work and consensus were aiming for real advances in shaping Maine's economic and environmental future, rather than just trying to patch up failed federal policies. What is needed from Washington generally is the following.

First, federal policy development and regulatory controls, when they are necessary, should be put through several tests of Yankee common sense before implementation. The failure of recent federal efforts in Maine has come when regulation has been shaped by beltway lawyers with no evidence of the common sense approach of farmers, mechanics, loggers or small business owners. If the average Mainer can not understand a regulation which will be applied to his or her activities, then that regulation should either be re-thought or put on hold until the voters can be educated as to its justifications and implications.

Second, when federal policy fails, as in certain aspects of the Clean Air Act, Congress should be poised to provide relief. Public faith in the Clean Air Act is collapsing. Governor Angus King may soon take extreme political risks to navigate through the Clean Air Act. If Congress does not give Maine some breathing room on Clean Air Act implementation, I am afraid to imagine the mess we will be in six months from now.

271 State Street, Augusta, Maine 04330-6900
207-622-3101 FAX 207-622-4341

Testimony of Everett B. Carson
Executive Director, The Natural Resources Council of Maine

presented to the U.S. Senate Subcommittee
on Oversight of Government Management
April 13, 1995 -- Bangor Field Hearing -- Regulatory Reform

Good morning. I am here representing the 6000 members of the Natural Resources Council of Maine, who, like all Maine citizens, treasure the quality of the environment in our state.

Thank you Senator Cohen, for allowing me the opportunity to address the subcommittee today.

You may hear today about serious problems with the regulatory process. I hope that you will hear equally serious proposals about how the regulatory process can be improved.

With all the anti-government sentiment afoot in America today, we seem ready to overlook the fact that governmental action often serves to protect our water, air, communities, civil rights - the quality of our lives as American citizens.

I'd like to focus for just a minute on one regulatory success -- the municipal wastewater treatment plants built under the Clean Water Act. These plants have transformed Maine rivers -- including the Penobscot River that runs right through town -- from open sewers with fumes that peeled the paint from houses, into a home for fish and wildlife and a source of joy for those who live in, visit and love our great state.

Today, we may hear about the frustrations of those wading through the process that protects our wetlands. I would like to focus for a moment on the value of wetlands.

Wetlands purify drinking water -- one three square-mile swamp in Georgia has been shown to improve water quality at an estimated value of $3 million annually.

Wetlands recharge groundwater. A 2,700 acre wetland in Massachusetts recharges an aquifer at a rate of 8 million gallons per day.

Wetlands prevent floods and protect against storms. the Army Corps of Engineers found that the loss of some wetlands along the Charles River near Boston would have caused $17 million in annual flood damage.

Coastal wetlands are also the nursery for our decimated offshore fisheries.

There is a brand new Maine-grown wetlands success story that I would like to share with you today.

Six months ago, in response to state legislation asking Maine to consider assuming the Army Corps 404 process, the State Planning Office and Department of Environmental Protection set up a task force. Under the auspices of this task force, business, development and environmental interests [the Maine Chamber of Commerce and Industry, Maine Alliance, Maine Forest Products Council, Maine Realtors Association, Nature Conservancy, Ducks Unlimited, Natural Resources Council of Maine] joined with state and federal officials to work through consensus to create a better process.

The four goals agreed on were:
- streamline the process and make it more efficient.
- make it simpler and cheaper for applicants.
- ensure equivalent or greater protections.
- ensure equivalent or greater public involvement.

An agreement outlining this new process was approved by all parties last month. It actually gives more protection to the highest value wetlands by means of a rigorous review process. It has streamlined the process by tailoring it to the size of the impact and the value of the affected wetland. The costs of a permit application increases as the number of square feet affected increases. Wetlands mitigation banking is currently being worked on, and with the right criteria, will make sense.

This Maine-grown example proves that we can achieve **regulatory reforms without rollbacks.** In my opinion, this is the type of thoughtful, inclusive, productive work that needs to take over Washington and Augusta.

I wish there was an entire panel here devoted to highlighting the many ways that regulations are working today to protect our families, our neighborhoods and our natural resources. Child-proof caps on medicines, equal rights protection regardless of race, creed or color, clean air standards designed to protect our childrens' lungs - all are regulations that protect the well-being of our families and friends.

What the country does not need is a regulatory overhaul that throws the baby out with the bathwater. Today we face that very danger.

I appreciate Senator Cohen's support for the Roth Bill -- S. 291 -- over the far more dangerous Dole bill -- S. 343. I was encouraged that Senator Cohen and the Governmental Affairs Committee rejected some of the House bill's most destructive elements.

But, unfortunately, while the Roth bill makes the obstacle course for protective laws and rules a little passable, it still threatens to undo the safeguards for our environment, food, health and safety and consumer products. It contains a veiled attack on drinkable water, breathable air and healthy natural resources.

The bill supported by this committee contains a number of troubling elements. Today, I would like to focus on two major aspects of the bill.

1. Of course, we all want regulations that make sense. To that end, the bill has mandated that a detailed cost/benefit analysis be completed for all major rules. In a statement about cost-benefit analysis as employed in The Contract with America on February 21, 1995, former Senator Ed Muskie said:

"Cost benefit analysis can be a useful tool. In fact, our laws generally require consideration of cost today. In the environment, there is one limited exception. The Clean Air Act requires the government to use science, not cost, to determine, as accurately as good science will allow, the level of pollution the human body will tolerate. Costs are considered in choosing among options for cleanup."

"It's important to note that estimates of cost come from the polluters. History tells us business almost always overestimates control costs. Estimates of benefit involve putting a dollar value on human suffering, a dollar value on shortened lives. How much is your father worth? Less now than in his prime? How much is your daughter worth? Less if she has asthma?"

"It's uncomfortable to talk about, but this is the essence of cost benefit analysis. These are the questions government must answer. Are individual lives and lungs worth the cost of cleaning up pollution? Or should we spend that money elsewhere and allow the individual to absorb the cost in sickness or shortened life?"

Inevitably, the result of these "cost-benefit analyses" would grossly underestimate those benefits that are difficult to quantify, so public protections that Americans cherish are bound to be undervalued.

If this cost-benefit provision had been in place before the Clea Water Act of 1972:

How would we quantify the direct and indirect benefits to Lewiston and Augusta from a river that does not smell and where tourism and economic development would be encouraged?

If this cost-benefit provision were enacted in 1995:

How would we quantify the human health benefits to the Penobscot

Nation of catching and eating fish that do not contain toxic levels of dioxin?

Where would the EPA get the funds to do these analyses? What other environmental protections would not occur? What lawsuits by polluters will we see because EPA could not afford to spend millions of dollars on a cost-benefit analyses before proposing each rule, so they didn't list every conceivable "cost" to industry and therefore their findings are open to legal challenges?

2. A second major problem with the Roth Bill is its "risk Assessment" provisions. The bill requires all regulatory decisions to serve the goal of "addressing the greatest needs in the most cost-effective manner." That approach sounds completely reasonable, without serious scrutiny.

Unfortunately, risk assessment is only a tool -- and a flawed tool at that. It often does not protect particularly vulnerable populations like asthmatics from air pollution, or hunters and fishermen from toxic pollutants that contaminate some fish and game.

In addition, risk assessments can be extremely expensive. This requirement could easily cost hundreds of millions -- probably billions -- of dollars. The EPA's risk assessment for one chemical -- dioxin -- has already cost 6 million dollars over a four-year span. I have not heard of any plan to provide federal agencies with the funds necessary to conduct the risk assessments and cost-benefit analyses contemplated by this bill. If government agencies are going to be frugal with taxpayer dollars, and produce <u>real</u> results that protect our health and environment, this bill will not help them achieve these goals.

If specific regulations need work, by all means lets address them. But please do not use specific shortcomings that can be remedied by specific constructive actions, as the excuse to strangle the agencies that safeguard our families, our communities and our natural resources.

While we understand the pressures that you face, Senator Cohen, and the committee from those who want to eviscerate environmental programs and standards, we ask you not to be compromised by the heat of the current political climate.

Maine people want sensible safeguards and steady progress. We fear the proposals in the current Roth bill will threaten both.

We urge you, Senator Cohen, and members of the Senate <u>not</u> to waste scarce resources and put citizens of Maine at risk. And we urge you to address any real, recognized problems with our regulatory system in a constructive way. The Natural Resources Council stands ready to assist you in that effort. Thank you.

STATEMENT OF JOHN G. MELROSE, COMMISSIONER
MAINE DEPARTMENT OF TRANSPORTATION
TO THE
UNITED STATES SENATE
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT
AND THE
DISTRICT OF COLUMBIA
ON THE IMPACT OF FEDERAL REGULATIONS ON MAINE
CITIZENS, COMMUNITIES AND BUSINESSES
April 13, 1995

Good morning, Mr. Chairman and members of the Subcommittee. My name is John G. Melrose and I am Commissioner of the Maine Department of Transportation. My agency is responsible for identifying transportation needs of citizens and businesses throughout the State of Maine and implementing public transportation projects to meet those needs.

I appreciate the opportunity to share with you today the views of the Department concerning the effect of federal regulations on the ability of the Department to meet its obligations. The Department's goals perhaps are best summarized in the vision statement it adopted as a part of its 20-Year Statewide Transportation Plan. That vision states that:

> The Maine Department of Transportation will create and maintain a safe, efficient and economical transportation system that is cost-effective, energy efficient, environmentally sound and responsive to the diverse needs and values of the people of Maine.

In my comments today, I will focus on the impacts of Section 404 of the federal Clean Water Act ("Section 404") on the Department's programs. Open discussion of issues relating to that regulatory program is particularly important since the act requires Congressional re-authorization this year.

My remarks are presented with the caveat that this statement ought not to be misconstrued as suggesting that the Department opposes environmental regulation per se. To the contrary, the Department fully supports the goals of statutory environmental programs such as the Clean Water Act and the Clean Air Act. However, the Department's day-to-day experience with some of the federal programs indicates that improvements to the regulatory systems are needed to ensure that both the public and the environment are properly protected.

As you are aware, Section 404 controls dredging and the placement of dredge and fill material in wetlands and other aquatic resources that constitute "waters of the United States." The scope of the federal jurisdiction under Section 404 generally has been interpreted expansively, bringing vast areas under regulatory control. In Maine, it has been estimated

that as much as 50 percent of the land area is wetland. That is the third highest percentage in the nation, following only Florida and Louisiana. It is significant to note that, unlike many other states, Maine's historic loss of wetlands has been low (approximately 2 percent). Due to the high level of wetland occurrence, including Maine's extensive systems of coastal and inland waterways, it is virtually impossible for the Department to carry out its programs without wetland impacts.

For nearly every project involving new construction or substantial improvement of existing facilities, the Department must go through the federal wetlands regulatory process. Currently, the program is administered principally by the U.S. Army Corps of Engineers ("ACE"). However, the U.S. Environmental Protection Agency ("EPA"), United States Fish & Wildlife Service ("FWS") and National Marine Fisheries Service ("NMFS") each also has a role in the process. In certain instances, the United States Coast Guard ("USCG") also plays a regulatory role. The Federal Highway Administration ("FHWA"), as the funding agency for most highway and some intermodal projects, is involved in most projects as well.

Based upon the Department's experience with the wetlands regulatory program, there are several key areas that are in critical need of reform. Surprisingly, many of the same problems occur regardless of project size or impacts. In some cases, the problems are exacerbated by conflicts with the compliance requirements under the National Environmental Policy Act ("NEPA").

The problems that I will discuss arise from a few fundamental conditions. Those include the lack of clear regulatory standards and decision-making, the lack of meaningful time limitations in the permitting and review process and too many agencies holding jurisdiction over parts of the wetlands regulatory program. These conditions create a system in which applicants can be buffeted back and forth among the agencies interminably. Over fifteen years of experience on the Sears Island project, which is described later in more detail, illustrates the dilemma. In that case, federal resource agency staff adamantly oppose the project and use every mechanism and issue available to them to prevent it from moving forward. The ACE, which appears willing to make reasonable decisions on the project, is caught in the regulatory web of multiple agencies exercising competing jurisdictional powers over wetlands. Unable to free itself from its regulatory ties to the federal resource agencies, the ACE continually seeks compromise without success.

Despite constructive efforts by the FHWA and ACE, the net effect from Maine's perspective is that the United States government opposes the project but is unwilling to be perceived publicly as responsible for killing it. Perhaps Maine's mistake has been not to accept the practical consequences of the federal

opposition, but to continue to work to meet identified economic development and transportation needs. Acting upon the belief that choices about Maine's future belong to Maine's citizens rather than to the federal bureaucracy may have been a costly error.

What the future holds will depend largely upon the outcome of regulatory review efforts like this one. If the present regulatory system is not reformed, the only prudent choice for the Department in the future is simply to avoid projects that involve the use of undeveloped land. That will mean accepting the fact that safety and mobility concerns for citizens and industry, together with Maine's ability to compete in global and domestic markets, will be treated as secondary to the total avoidance of natural resource impacts.

To illustrate the Department's areas of concern, I will describe the regulatory process as it has taken shape in some of the Department's projects. The first is the Sears Island marine terminal project in Searsport.

I. Sears Island Marine Dry Cargo Terminal Project

The project that clearly illustrates the broad range of difficulties that can be encountered in the federal regulatory process is the Department's proposal to construct a marine dry cargo terminal in Searsport. While admittedly the Sears Island project may not be typical in the sense that a single project normally would not encounter as many regulatory issues, the issues themselves are commonly experienced in carrying out the broad spectrum of the Department's highway, rail, marine and airport programs.

By way of background, the cargo terminal proposal is an outgrowth of efforts begun in the 1970s to respond to public needs for economic development, coastal resource protection and public infrastructure. Working from the recommendations submitted by a task force appointed by Maine's governor, the Maine State Planning Office and the Department together developed a "Three Port Policy" and program that included the construction of a new marine terminal in Searsport. The program reflected the results of numerous feasibility and other studies that examined issues such as the need for new or improved marine cargo facilities and the appropriate locations for public investments in marine transportation infrastructure.

The Department first sought federal permits from the ACE and the USCG for a marine terminal project at Sears Island in the early 1980s. Environmental assessments were prepared under NEPA and submitted to the agencies. Following a finding by the ACE of no significant impacts from the project, permits for access road and rail and a two-berth terminal were granted in 1984, despite opposition from the EPA, FWS and NMFS. The Maine Chapter of the Sierra Club ("Sierra Club") challenged the 1984

permits, alleging that a full environmental impact statement ("EIS") should have been prepared for the project.

As a result of the Sierra Club litigation, construction of the project was halted in 1985 and an EIS was prepared. The EPA, FWS and NMFS continued to oppose the project. In 1987, the FHWA, as the lead agency under NEPA, approved the Final EIS. The ACE issued a new permit for the project in 1988.

The Sierra Club challenged the ACOE and USCG permits, as well as the sufficiency of the EIS. The claims in the 1988 lawsuit focused upon the alleged suitability of another location (Mack Point in Searsport) that was rejected in the alternatives analyses under NEPA and the Clean Water Act. The action also raised challenges to the secondary impact analysis done for the project, to the amount of future expansion acreage for which an impacts analysis was done and to the methods used to comply with a number of technical NEPA requirements.

To resolve the Sierra Club claim about the possible effects of future facility expansion, the Department undertook field studies in 1989 to evaluate potential natural resource impacts. The field work found freshwater wetland areas not identified by the Department, its consultants, the ACE, the EPA, the FWS, or the Sierra Club in previous field visits or regulatory proceedings. The Department followed up the initial 1989 field work with extensive wetland delineation efforts for the site, including the original terminal area. After consultation with the FHWA and ACE, the Department commenced the preparation of a Supplemental EIS ("SEIS") to address the new information relating to the wetlands. In July, 1991, the federal interagency consultation process on the SEIS and Section 404 review began. That process is a part of the Highway Methodology, which was developed by the New England Division of the ACE to streamline and coordinate NEPA and Section 404 proceedings.

Note that commencement of the field studies on the potential impacts of expansion rendered moot the Sierra Club claim on that issue. On all other counts of the Sierra Club lawsuit, including the claims that Mack Point ought not to have been rejected as an alternative, the Department and the other defendants prevailed.

Some of the major programmatic issues that have arisen during the SEIS proceedings are summarized below.

Scope of Project Information to be Provided

For both NEPA and Section 404, the applicant is responsible for providing sufficient information on potential project impacts to allow a reasoned decision by the affected agencies. In this case, the relevant agencies are the FHWA, as lead agency under NEPA, and the ACE as the permitting authority under

Section 404. FHWA makes the primary decision about the scope of information to be provided under NEPA. The ACE can require different information under Section 404 and, because it must comply with NEPA in making its permit decision, the ACE also can make an independent determination on the adequacy of the scope of work under NEPA. Both the FHWA and ACE must consider input from the EPA, FWS and NMFS, in making their decisions on the scope of work.

The original scope of work for the SEIS, pursuant to the provisions in NEPA implementing regulations, was to evaluate the new information on wetlands at the project site on Sears Island. Concurrently, also under the NEPA regulations, any significant new information that might affect the outcome of federal decisions on the project was to be evaluated. That NEPA scope initially was treated by the ACE as meeting the requirements of Section 404. When the Department undertook the SEIS in 1991, officials from the ACE opined that the SEIS would be a brief document that could be completed in six months. Today, the public draft of the SEIS, consisting of hundreds of pages of text and graphics, is scheduled to be released in May, 1995. That is nearly four years after the SEIS process started.

The delay was caused in large part by the events occurring in the course of the federal interagency consultation process. For nearly a year, the Department met with the federal agencies, including the federal resource agencies (EPA, FWS, NMFS) to try to establish a scope of work for the SEIS. Each meeting resulted in new agency requests for detailed studies, including extensive new terrestrial and marine resource studies of Sears Island. The Department objected to much of the proposed work as excessive in terms of the time and expenditures required, and as being unnecessary in light of the substantial amount of information already available about the resources. While the FHWA frequently was sympathetic to the Department's concerns, the ACE had difficulty in making a final or definitive statement whether a given resource agency's request was outside the scope of required information. This left the Department to choose whether to expend the time and money obtaining the information up front, or to reject the resource agency request and risk a later determination by the ACE that the NEPA or Section 404 documentation was incomplete because the requested information should have been obtained. In most instances, where the Department was unable to get strong and final scoping decisions from both the FHWA and ACE on an issue, the Department chose to meet the resource agencies' demands rather than risk delays at later points in the process.

One area where the lack of clear and early definition of required data and documentation had a substantial effect was in the alternatives analysis under NEPA and Section 404. The initial scope of work focused on re-evaluating the Sears Island alternative approved in 1988 in light of the new wetlands impact

information. At EPA's request in 1991, the scope was broadened to include an evaluation of the impact of the then-new information that Loring Air Force Base in Limestone, Maine was scheduled to close. The EPA viewed the closure as possibly leading to the abandonment of the Defense Logistics Agency's federal fuel facility at Mack Point, with the ultimate effect that the fuel facility might provide suitable land which might enable the Department to locate its facility at Mack Point rather than Sears Island. A general update of Mack Point land availability, dredging requirements at Mack Point, potential changes in navigational conditions and cost estimates then was requested. From that point, the scope of the alternatives review expanded several more times based upon continuing resource agency demands. Ultimately, the coast of Maine from Bath to Bangor/Brewer was re-evaluated (unlike the proceedings for the EIS, the EPA in this instance agreed that ports outside Maine could be eliminated from the alternatives study). In the case of Mack Point, the scope of evaluation changed significantly at least two more times and the EPA presently is pressing for yet another level of evaluation of that location. Each time the alternatives scope was established, the FHWA and ACE concurred in the decision. Each time the scope was changed, the ACE had altered its views after discussions with the federal resource agencies.

Based upon discussions with the EPA, there are two justifications for the continuing demands for additional data and evaluation. The first is that Section 404 proceedings can require different information than NEPA. The second is that "scoping" under NEPA never ends, but continues through the life of the proceeding. While each premise may be technically correct, it is clear that the interpretation of these concepts by the agencies in a manner that deprives an applicant of any certainty or reliability in the process does not comport with the intention of the underlying statutes or with principles of good government administration.

Alternatives and the LEDPA

Under NEPA, the FHWA must identify reasonable alternatives to the proposed action. Under Section 404, the regulatory standard is practicability, which is defined in the regulations as "feasible in light of costs, logistics and technology." While the 404(b)(1) guidelines for Section 404 proceedings envision that the NEPA scope is broader and more inclusive, in the SEIS process the EPA has supported the view that the feasibility test ought to be strictly and literally interpreted. That is, if an alternative is technologically possible to accomplish, the EPA views it as practicable even if it may defy common sense or be substantially more expensive or less effective than other alternatives. While the ACE generally has not adopted the EPA's view on the issue of feasibility, the EPA's interpretation (which frequently has been seconded by NMFS and FWS) has resulted in extensive and time-consuming debate

about what constitutes an alternative for the marine terminal project. It also, for the reasons discussed in the scoping section above, has led to the substantial expenditure of time and effort to address "feasibility" issues raised by EPA with respect to Mack Point and other alternatives.

Another aspect of the alternatives review process that is problematic is the procedural order for certain events under the ACE's Highway Methodology. Although the methodology was developed to try to simplify the process and to make the NEPA and Section 404 processes consistent, that result has not been fully achieved. In the case of the selection of alternatives, the methodology has not reconciled the Section 404 procedures with NEPA procedures. The methodology also conflicts with state permitting requirements. Perhaps the best illustration of this is in the timing of the selection by the applicant of its preferred alternative under NEPA and the ACE's selection of the least environmentally damaging practicable alternative ("LEDPA").

Under normal circumstances, the LEDPA is the only alternative the ACE can or will permit. The LEDPA is not identified until sometime after the completion of the joint public hearing on a project under NEPA and Section 404. In the case of the proposed cargo terminal, the ACE has requested that the Department not commit itself to an alternative until after the hearing. In other words, all alternatives under consideration in the SEIS (presently 12) would remain in contention until after the public hearing. Although this is theoretically a reasonable approach that permits the ACE to factor public comments into its decision, as a practical matter it is uneconomic and functions poorly. The ACE requires the filing of a permit application before it will hold the public hearing. The permit application sets forth technical information, including engineering cross-sections, that must be provided relating to the alternative the Department proposes to implement. It makes little sense to prepare such material for numerous alternatives. The ACE has suggested in this case that this issue can be overcome by referring to the drawings and materials in the SEIS. It is not clear that such an approach complies with the ACE regulatory requirements appearing in 33 CFR Section 325.2 (processing of applications) or Section 325.3 (public notice). It also is confusing and potentially misleading to the public to the extent that it fails to identify what the Department proposes to do or fosters a perception that all of the alternatives are equally acceptable to the Department.

Another issue raised by the timing of the selection of the LEDPA is that progress on mitigation plans for the project is limited by the uncertainty of the location and extent of potential impacts. Until a project location is identified, only the most conceptual level of discussion can occur on mitigation issues. The bulk of the lengthy mitigation planning and

documentation work then must occur after the public hearing and identification of the LEDPA.

The conflict between the ACE process and state permitting requirements is two-fold. First, the permit from the Maine Department of Environmental Protection ("MDEP") serves as the water quality certification under the federal Coastal Zone Management Program ("CZM"). That certification is required before the ACE can issue a Section 404 permit. Second, the MDEP process envisions application for a single alternative and requires permit applications to include a level of design and engineering analysis far in excess of that required for NEPA and Section 404. The time and cost attendant to preparing the MDEP application materials cannot reasonably be absorbed for multiple alternatives.

These conditions create two unpalatable choices. The Department can defer applying for the MDEP approvals until after the ACE has held its NEPA and Section 404 public hearing and chosen a LEDPA. That allows the Department to know which alternative ought to be taken to advanced design and submitted to MDEP. The second option is to make a judgment about which alternative the ACE is most likely to approve and proceed with advanced design for that alternative for submission to MDEP. The first choice builds in six months or more of delay between the time the ACE chooses the LEDPA and the time the ACE receives the CZM certification from MDEP that would allow the ACE to complete its permit decision. The other option makes the Department assume the costly risk of submitting an application for MDEP approval that reflects a different alternative than the one ultimately chosen by the ACE.

For the Sears Island project, it appears that the choice will be to proceed with an MDEP application. The Department will select an alternative for further design that it concludes is the most likely to be designated as the LEDPA. If the choice proves incorrect, there will be additional delays while the MDEP application is modified and resubmitted.

Failing to Reach Closure on Important Issues

On many of the major decisions involved in the preparation and review process for the SEIS, there has been a demonstrated inability by the federal agencies to reach a final decision that provides the Department with reliable guidance. The treatment of Mack Point as an alternative is the most significant example of this difficulty.

Mack Point is the site of existing private marine terminal operations in Searsport. In the 1988 project proceedings, Mack Point was eliminated as an alternative by the FHWA and ACE. The federal court upheld the decisions of the FHWA and ACE in subsequent litigation brought by the Sierra Club. As described earlier, the initial review of the Mack Point location in the

SEIS proceedings was to look at new information and generally update information on issues addressed in the earlier decisions rejecting Mack Point. The Department's SEIS evaluations demonstrated that the federal fuel storage facility was not going to be abandoned and, even if it were, that change in circumstance would not change the outcome of earlier evaluations of Mack Point. The results of the Department's evaluations were presented to the federal agencies in December, 1992. An independent consultant retained by the ACE to provide the federal agencies with an independent evaluation of major issues (TAMS Consultants, Inc.) agreed with the Department's conclusions. At the December, 1992 interagency meeting, the general guidance from the ACE and FHWA was that they were satisfied that there was no reason to perform further data-gathering or evaluation of the Mack Point location.

In January, 1993, the EPA called a meeting of federal resource agencies and the ACE to discuss the Searsport project. Neither the FHWA nor the Department were informed of the meeting or invited to attend. Following the meeting, the ACE advised the Department that a new analysis should be performed of the Mack Point location. As a result of that change in position by the ACE, the Department embarked upon a six-month effort to develop new alternatives and new approaches that would satisfy the new agency demands. The results of that work were presented to the federal agencies in July, 1993. At the conclusion of that meeting, the Department again was given guidance by the FHWA and ACE that Mack Point did not present an alternative and, subject to information received through the public hearing and comment process, no further work on the Mack Point location was warranted. Again, the independent consultant retained through the ACE agreed with the results of the Department's analysis.

The Department proceeded with preparation of detailed impact analyses of remaining alternatives based upon the guidance from the FHWA and ACE. In the fall of 1994, the EPA decided to retain a port consultant in order to study how to make the Mack Point location work as an alternative (including possible use of the federal fuel facility and changes in project capacity requirements). Although the final report from the EPA consultant is not available, it appears that the report includes proposed revision or elimination of basic project components and assumptions that long ago were established for the project. The present EPA effort, in a technical area outside its jurisdiction and expertise, represents another source of delay and increased costs to the taxpayers for the environmental review process for the project.

The inability to secure reliable decision-making from the federal agencies, individually or collectively, has affected the entire project. Issues that ought to have been decided early in the process, such as project need, capacity requirements and scope of analysis, generally have been settled only until one or more of the resource agencies re-opened the matters with new

objections or demands. The cost to the public, in both time and money, of this type of process is not supportable. The federal government should speak wih a single voice on wetlands issues and applicants should have clear information early in the process about the standards they must meet. It should be possible to inform the Department in the initial stages of project development whether a project meets the standards, needs specific changes in order to meet the standards, or simply will not meet requirements even if modified.

Mitigation

The Section 404 program requires compensatory mitigation for unavoidable adverse effects of filling wetlands. Much of the regulatory program on mitigation appears not in promulgated regulations, but in federal interagency memoranda of agreement ("MOA"). The hierarchy for acceptable mitigation is established through a MOA between the ACE and EPA. Under the MOA, restoration of already-degraded wetlands, creation of new wetlands, or enhancement of existing wetlands is preferred over preservation of existing wetland areas. Preservation is to be used only in unique circumstances. The meaning of the term "unique circumstances" is not defined.

In the case of the Sears Island project, discussion on mitigation issues has been difficult to move forward. Federal resource agencies are reluctant to discuss mitigation for a project on Sears Island, since they feel that to do so would imply an acceptance of an alternative using the island. In an effort to move forward on mitigation issues, the Department arranged to acquire Sears Island from its private owner in 1994, for $4.5 million, so that preservation of those portions of the island not used for the proposed terminal could be offered as mitigation for the impacts of the project. The Department took that step in an effort to respond to federal resource agency sentiments that the island offers "unique" resources, as well as to address the desire of the local community to ensure public access to the island in the future. To date, the federal resource agencies have declined to consider preservation as an appropriate form of mitigation for the project, but have expressed the view that the acquisition of the island would be required in order to prevent secondary and cumulative impacts.

To date, discussions about other mitigation approaches for project impacts have not been successful. Possible mitigation approaches and alternative mitigation sites have been presented to the federal agencies for comment several times over the last three years. Comments from EPA and NMFS variously have reflected views that impacts to forested wetlands and marine eelgrass habitat cannot be mitigated, or that in order to provide mitigation the Department should consider building an island in Penobscot Bay that replicates the natural resource conditions at Sears Island. To the extent that there have been discussions about the appropriate ratio of compensatory

mitigation to impacts, resource agencies have indicated that 1 acre of mitigation to 1 acre of impact will not be sufficient and ratios of 4 acres to 1 acre have been suggested for creation or restoration efforts. Project alternatives have wetland impacts in the range of 18 to 25 acres. Potential eelgrass habitat impacts of the alternatives range from less than 1 acre to approximately 13.5 acres. At an average cost for freshwater wetland mitigation of over $150,000 per acre, and an estimated cost for eelgrass habitat mitigation of $600,000 per acre, it is clear that the mitigation ratios selected by the ACE will have a substantial impact on project costs.

Finally, many of the concerns expressed by federal resource agency staff focus not on wetland impacts, but on issues like the fragmentation of upland forest habitat for neo-tropic migrant birds. While such impacts merit consideration in the planning process, they are much removed from the central regulatory purpose of the Clean Water Act and the incorporation of such impacts into the Section 404 decision-making process is questionable.

The lack of certainty and the inability to bring the various agencies to agreement on mitigation issues arises in large part from the absence of meaningful standards in the governing statute and regulations. Agency staff are free to apply their individual views and perceptions. The absence of established standards for what will be mitigated and how it will be mitigated allows the mitigation requirement to be used as a tool to drive up project costs to unacceptable levels or, alternatively, to extract from applicants costly concessions that exceed the scope and intent of the statutory program.

Time Limitations

All of the difficulties discussed above are caused in part by the absence of time limitations on the actions of the federal agencies, particularly the resource agencies. Because most of the development of project components occurs during the NEPA scoping phase and the Section 404 pre-application phase, there are no regulatory limitations on the amount of time the agencies can take to identify issues or submit their comments on materials submitted.

While an applicant is free to move ahead and file an application without agency input, there are strong deterrents against that choice. First, in the case of public applicants like the Department, the ACE policy is to use the Highway Methodology. Refusal to comply with the ACE policy risks resistance from the ACE on later permit issues. Second, federal agency comments are critical to developing alternatives and to identifying the information needed for NEPA and Section 404 documentation. Dismissing agency input as unnecessary would result in opposition to whatever concepts ultimately are

presented and in subsequent delays due to agency demands for submission of additional information for the proceedings.

A similar situation exists with respect to mitigation. The ACE generally expects to complete negotiations on mitigation requirements during the period following the submission of an application for the Section 404 permit. There is no deadline for a decision by the ACE on mitigation and issuance of a permit will not occur until mitigation is resolved. The typical time frame cited by the ACE for mitigation negotiations is six months. In a contested situation like the Sears Island project and some of the projects discussed later, a longer period can be expected.

II. Route 9 Highway Improvement Project

Several years ago, the Department identified and began preliminary engineering work on a number of projects along the Route 9 highway corridor that runs east from Bangor to Calais (known locally as the "Airline"). The objective was to make the highway meet modern design standards. The projects were separately scheduled to occur over a decade or more, with the first project scheduled for construction in 1993. The work on each project consisted of widenings, addition of truck passing lanes and other safety improvements. Limited sections of new alignment, to straighten out difficult curves, were included in some of the projects. All of the projects involved some wetland impacts subject to ACE jurisdiction.

Each project was designed to avoid and minimize wetland impacts. FHWA, as the funding agency for the projects, determined that each project had independent utility (i.e., they were not dependent upon each other) and met categorical exclusion standards under NEPA. Because of the FHWA decision that the projects were categorically excluded from NEPA, they also qualified for nationwide permits (#23) under Section 404. That meant that the projects could proceed to construction without any action by the ACE and that the lengthier and more costly individual permit process did not apply.

Although the Department was not required to provide notice of the projects to the ACE under the applicable nationwide permit, in keeping with its standard practice it sent information on the projects to the ACE as they were developed. The ACE asked the Department to consider providing mitigation for some of the projects that had wetland impacts of three acres or more.

In considering mitigation possibilities for the decade-long series of projects, the Department concluded that a single, comprehensive mitigation package covering the projects was likely to provide a more creative and ecologically meaningful environmental benefit than individual, scattered mitigation projects. A comprehensive mitigation plan also could save

project time and expense through approval of mitigation for several projects together. The concept of grouping separate projects for purposes of a comprehensive mitigation plan was presented to the ACE in March, 1993 and received a favorable response.

Failing to Reach Closure on Important Issues

On April 13, 1993, the Department presented the comprehensive mitigation proposal to the ACE and the federal resource agencies at a regular monthly interagency permit meeting. Comments at the time were favorable. The ACE representative indicated at the meeting that the ACE was prepared to allow the nationwide permit for the first of the projects to go forward, with mitigation for the project to be included in the comprehensive package.

The April 13 mitigation presentation triggered a different response from the EPA. On June 13, 1993, EPA objected that the Route 9 projects presented an issue of potential cumulative impacts. EPA viewed the proposal of a comprehensive mitigation package as evidence that the projects constituted a single and connected proposal. The EPA requested that all Route 9 permits be grouped together into an individual permit application under Section 404 and that a NEPA environmental assessment be prepared.

Discussions among the agencies continued through the summer of 1993. In June, 1993, the ACE agreed that a nationwide permit applied to one of the projects ready to move forward. On August 2, 1993, the ACE took the same position on a second project. However, on August 31, 1993, the ACE revoked the second project's nationwide permit. The ACE letter cited potential individual and cumulative impacts from the project and other upgrades of Route 9 as the basis for revocation pending a decision whether an individual permit would be required.

The Department conducted a field trip for the FHWA, ACE, EPA and FWS in September, 1993, to review the project sites and the proposed mitigation areas and to discuss the issues raised by EPA about treating all Route 9 projects as a single project.

In October, 1993, the ACE re-authorized the revoked nationwide permit. The agency indicated that it intended to treat the remaining Route 9 projects as qualifying for nationwide permits. The Department proceeded with engineering and other work for the projects on that basis.

In April and May of 1994, the Department notified the ACE that the next two projects were ready to move forward under nationwide permits. In June, because safe travel speeds on Route 9 had been reduced to 35 miles per hour due to the condition of the roadway, FHWA and the Department requested

emergency procedures to expedite an ACE decision on the pending nationwide permits.

On July 11, 1994, the ACE reversed its previous position on the projects and indicated that an individual permit would be required for all the Route 9 projects as a group. The ACE estimated the permit could be processed and approved within 40 days. Based upon the ACE timetable, the Department proceeded with advertisement of the projects for construction bids. In accordance with ACE instructions, the Department also submitted a permit application covering the remaining Route 9 projects. Several of the projects included in that application were at a conceptual stage, with only the approximate termini and general nature of the required work (e.g., reconstruction) known at that time.

Public notice of the permit application was published in August, 1994. The ACE indicated it was prepared to approve four of the projects using a conceptual mitigation plan.

In October, 1994, the EPA wrote to the ACE requesting that the permits not be issued until the environmental assessment for the projects adequately addressed efforts to minimize wetland impacts and mitigation. EPA asked that plans reflecting a 30 percent level of design be submitted for mitigation. On October 26, the ACE notified the Department that 30-40 percent design level mitigation plans would be required before the permit could be issued.

The Department submitted a draft plan on November 10, 1994. On November 29, 1994, the ACE requested additional information for the mitigation plan. An interagency meeting on the plan was held on December 21, 1994. A revised plan, reflecting comments at the meeting, was submitted to the ACE on March 3, 1995. It was agreed that comments would be submitted by federal agencies no later than March 17, 1995. Comments from the EPA and FWS were not received until March 30-31, at which time those agencies notified the ACE that they found the mitigation plan insufficient.

As of April 7, 1995, the ACE decided to approve the permit, with conditions, without further delay. The EPA and FWS indicated that they would not attempt to elevate the projects if the ACE approved them. Mitigation costs for the twelve Route 9 projects approved by the ACE, involving total estimated wetland impacts of approximately 42 acres, are now forecasted at $6.8 million.

The failure by the ACE to make firm decisions on the NEPA and Section 404 permit questions raised by EPA in June, 1993, or on the requirements for the mitigation plan, created a delay of nearly two years. The losses to the public from this regulatory problem include the loss of use of a safe roadway, additional costs created by the confusion and changes in permit processing

and potential damage claims by construction contractors who were awarded contracts by the Department based upon the representations made by the ACE about the processing of the permit.

Time Limitations

In the absence of a system that imposes deadlines on agency actions, it was possible for the dispute relating to the type of NEPA documentation and the type of permit required for the Route 9 projects to continue for nearly two years. Similarly, while mitigation discussions began in early 1993, no agreement ever was reached with the EPA and FWS on mitigation and it was only a decision by the ACE to act without consensus that moved the project forward two years later.

III. Orrington Bypass

The Orrington Bypass project is a 1.4-mile project intended to upgrade the highway to modern design standards and to cure certain safety problems. The Department worked with the FHWA, ACE and federal resource agencies to identify the LEDPA. The EPA and FWS submitted comments on the project in August, 1994. All parties have agreed that wetland impacts were avoided and minimized to the extent practicable by the alternative chosen by the Department. That alternative will require the filling of 2.2 acres of freshwater wetlands and the alteration of 800 linear feet of two streams.

Failing to Reach Closure on Important Issues

The Department concluded that the project met the standards for a State Program General Permit ("SPGP"). The ACE agreed with that conclusion. The SPGP applies to projects with minimal impacts. During the processing of a SPGP application submitted to the ACE, the ACE consults with the federal resource agencies. The ACE has the option to require the applicant to proceed with the project as an individual permit if it determines the impacts or other considerations warrant more detailed analysis. The SPGP process expedites the approval of a project, with an expected processing time of no more than 30 days. An individual permit normally takes a minimum of six months to process.

In the case of the Orrington Bypass, the ACE indicated its intention to process the project under the SPGP provisions. In their August, 1994 comment letters, both the EPA and FWS objected to the use of the SPGP process and requested that the ACE require an individual permit application.

The ACE continued to endorse the use of the SPGP process and the Department proceeded with its project development on that basis. In late February, 1995, the EPA and FWS again

submitted letters objecting to the use of the SPGP. The text of those letters reads in relevant parts:

> The Maine SPGP is meant for projects which either alone or cumulatively will have a minimal impact on the aquatic environment. While we currently see no deficiencies in the permit application, it is the EPA's position that this application should be reviewed in the individual permit process. (Letter dated February 27, 1995 to William Lawless, Chief, Regulatory Division, NED ACE, from Douglas Thompson, Chief, Wetlands Section, Region I EPA)(emphasis added).

> Our conclusion is not based on any deficiency in the application, nor do we expect that any resource benefits (e.g. a reduction in wetland fill) will be gained by going through the individual permit process. Nevertheless, we firmly believe that the wetland and other resource impacts associated with this project exceed those of a minimum impact project that is appropriate for an SPGP. (Letter dated February 22, 1995 to William Lawless, Chief, Regulatory Division, NED ACE, from William Neidermyer, Acting Supervisor, NE FWS)(emphasis added).

Following further discussions between the ACE and the resource agencies, the ACE reversed its position and informed the Department that an individual permit would be required for the project. There is no suggestion that the additional six months or more of processing will result in any environmental benefit, but it will result in added costs and delays to the public.

IV. General Discussion.

In addition to the issues already discussed in the context of specific projects, there are a number of other issues affecting the Section 404 program that merit consideration. This section will outline some of those issues.

EPA Veto Authority

The system also is structured in a manner that invites endless delay. By vesting the power in EPA to halt a project through the exercise of its Section 404(c) veto power, the Congress has given that agency a tool with which it virtually can blackmail a project proponent and hold projects "hostage." The EPA veto power limits the ability of the ACE to make and stand by reasonable permit decisions. The ACE is caught between not wanting to approve a project that the EPA will veto and not wanting to be driven to bad decision-making by EPA's views. The EPA's power presents a constant challenge to the ACE's permitting authority by encouraging applicants to conduct independent negotiations with EPA.

For the applicant, the choices are no better than for the ACE. In all too many public projects, like the Department's Fore River Bridge project and Scarborough Connector project, the applicant finds itself facing a choice between continued delays while EPA demands are negotiated or otherwise dealt with, or substantial project cost increases absorbed in order to satisfy EPA and move forward with the project.

Mitigation

The area that presents one of the greatest challenges under Section 404 is mitigation. The Department presently is engaged in a study to identify the overall costs and impacts of state and federal wetlands mitigation requirements. Preliminary information indicates that there is no consistency within the Section 404 process for when mitigation will be required, what will be acceptable, how long it will take to negotiate an acceptable plan, or how much it will cost. In some cases, preservation has been accepted. In others, it is rejected as incapable of meeting mitigation standards. In some cases, creation of wetlands is readily accepted. In others, resource agencies suggest creation is not scientifically proven to be successful and ought not to be accepted.

The preliminary data for the Department's study indicates that the average wetland impact for its projects is 2.2 acres. The average cost of mitigation for a project is $344,960. For some projects, where the project impacts or the mitigation issues generate more controversy with the resource agencies, the costs can be much higher. In the case of the Scarborough Connector project, for example, the Department had to provide 25.4 acres of mitigation for 4.6 acres of impact in order to satisfy EPA and FWS demands. The cost of that mitigation package was $2,228,501. The cost of construction for that project, exclusive of mitigation, was $10,506,771.

The present system for developing mitigation components of a Section 404 project also adds substantial time to the permitting process. In the Department's experience, the average project needs nearly 100 weeks to complete the mitigation planning and approval process. The bulk of that work period cannot begin until after the LEDPA has been selected by the ACE. As previously described, the selection of the LEDPA is one of the last events in the permitting process. Although the ACE informally has attempted to provide some flexibility to shorten the time frames for projects, the processing order and time requirements remain serious problems for the Department.

Simplification and Establishment of Objective Standards

Nearly everyone involved in the Section 404 process from the customer side agrees that there is a need for a simpler process with clearer standards and less opportunity for federal representatives to make decisions based upon personal views

rather than law and science. Frequently, the views of federal resource agencies are articulated through sweeping generalizations and without supporting data. Those same agencies, on the other hand, want applicants to provide extensive data and to perform impact analyses on the assumption that environmental harm will occur unless the applicant can prove beyond a reasonable doubt that it will not.

Common Mission

The processing of Section 404 permits imposes significant delays and costs on projects in large part because the federal agencies involved do not share a common mission among themselves or with the applicant. The objective of environmental advocacy agencies like EPA, FWS and NMFS is to fight to avoid all impacts on the natural environment. That naturally results in an adversarial situation when those agencies are given a role in the Section 404 process. The resource agency representatives find it understandably difficult to become objective advisors to the ACE when reviewing applications for development projects.

Even though only the EPA has the power to actually prevent a project, all of the resource agencies have the tools to impose costly delays and other burdens on a project during the NEPA and Section 404 proceedings. Even after the Department has satisfied the concerns of state resource agencies on a particular project, the federal resource agencies usually remain dissatisfied and unwilling to move the project forward. Until the functions of advocate and regulator are separated, or the role of the federal resource agencies becomes more limited than it is presently, this damaging dynamic will continue.

Where the applicant is a public agency, this situation is particularly egregious. Prolonged and costly project proceedings cost the taxpayers at both ends. It ought to be possible to craft an approach to public projects that recognizes that the objective of all of the parties is to serve the public interest.

Federal Zoning

The essence of the resource agencies' approach to NEPA and Section 404 proceedings is an effort to impose a form of federal zoning on local communities. Those federal agencies wish to shape land use decisions and utilize their Section 404 and NEPA roles to achieve that objective. In Maine, communities always have taken great pride in making local land use decisions. Nothing in the Clean Water Act statutory scheme indicates an intent by Congress to remove that power from the states and their communities and to place it with the federal resource agencies. Although the intentions of those in the federal resource agencies may be honorable, their activities exceed their statutory mandates. It is this overreaching that has helped to foster the growing backlash against environmental

regulation, such as the movement to treat decisions under the Section 404 program as takings and to require compensation to landowners deprived of development rights.

V. Suggestions for Consideration

Given the opportunity Congress now has to revisit the policy and administrative issues relating to the Clean Water Act program, the Department has assembled a list of ideas for consideration by the Subcommittee. Implementation of some would require revisions to the Clean Water Act or the implementing regulations. Other ideas pertain more to improvements in the administration of the statute and regulations.

(1) Re-evaluate the appropriateness of the EPA's Section 404(c) veto authority.

(2) Simplify standards for delegating wetlands regulation to states, like Maine, that have adequate regulatory programs in effect; eliminate present EPA oversight provisions where states assume wetlands regulation responsibilities; and provide federal funding, if demonstrated as necessary, for states that assume the broader regulatory responsibilities that now are administered at the federal level.

(3) Modify the Section 404 mitigation program to implement a sliding scale fee system for mitigation. Such a system would provide predictability to applicants, would expedite permit processing and would eliminate the current system of piecemeal mitigation sites of questionable ecological value. The fee system, properly administered, would not negatively affect the sequencing requirements for Section 404 projects (avoidance, minimization, compensation). In the alternative, modify the existing regulations on mitigation; provide regulations on mitigation standards similar to MDEP's Chapter 310; create a preference for the use of more creative and productive compensatory mitigation approaches such as preservation, comprehensive multi-project mitigation proposals and mitigation banking; establish specific thresholds under the nationwide and general permit systems for triggering mitigation; reduce the processing time for mitigation plans; and specifically define what functions and values are to be mitigated and the types of mitigation measures that will satisfy a mitigation obligation.

(4) Establish a process for earlier identification of the LEDPA. To avoid concerns about placing limitations on the public input, consideration could be given to adding earlier public participation opportunities to the interagency review process under NEPA and Section

404. Alternatively, the selection of the LEDPA could be subject to change if information submitted during the public comment process warrants it.

(5) Establish time limitations for each step of the Section 404 permitting process, including the interagency consultation process, requiring federal agencies to submit comments and act on applicants' submissions within those time frames. The limitations should include a point early in the process at which the type of permit a project needs is determined and the decision is final.

(6) Adopt a wetlands mapping requirement like that proposed in H.R. 961 (Title VIII, Section 803)(104th Congress, 1st Session).

(7) Clarify the wetland delineation criteria and establish classes of wetlands, with appropriate levels of protection by class.

(8) Clarify the meaning of "no net loss" and how it is to be interpreted in administering the Section 404 program.

(9) Clarify Congressional intent under the Clean Water Act with respect to the interpretation by agencies of such regulatory standards as practicable alternatives, significant degradation and unacceptable adverse effects.

(10) Eliminate or restrict the use of interagency memoranda of agreement and regulatory guidance letters to ensure that important regulatory requirements are subject to full public comment through the rule-making process. and that all relevant regulatory material is easily available.

(11) Clarify the advisory role of federal resource agencies and prohibit them from undertaking technical studies of project issues on subjects outside the agency's jurisdiction and expertise.

Maineport Towboats, Inc.
Marshall Wharf, P.O.Box 126
Belfast, Maine 04915
207-338-3000

April 5, 1995

Senator William S. Cohen
United States Senate
Committee on Government Affairs
Washington, D.C. 20510-6250

Dear Senator Cohen:

If any one project epitomizes the frustration that Maine business people feel about excessive federal regulation, it is the construction of a modern cargo port at Searsport on Sears Island. In the late seventies it became clear that for our state to become full trading partners in the global market place we would need a modern intermodal cargo facility. The MDOT adopted a three port plan for the State including Searsport, Eastport, and Portland. The philosophy of confining development to these three ports makes sound environmental and economic sense.

The MDOT moved forward and planned a facility on Sears Island, after examining many other alternatives. The Port took advantage of existing deep water and rail access. This combination of deep water and rail is unique to Searsport on the coast of Maine. It has, throughout the 12 year permitting saga, studied and restudied every issue raised by the myriad government agencies - including EPA, NMFS, COE, DEP, FHA, Coast Guard and others.

Twice in the twelve years, the federal review process has

yielded permits and extensive construction was completed. Twice construction has been halted through (federally financed) frivolous lawsuits from the Sierra Club. The Sierra Club skillfully used the Federal Regulatory system to gain reimbursement of its legal fees through the Equal Access to Justice Act. Between lawsuits Maine has completed an access road, site preparation, 92% of the dredging is completed, initial breakwater construction is begun and $3.5 Millon dollars worth of steel is purchased and sits rusting at the Searsport Town Dump. Throughout this process the State has made compromise after compromise to address the flow of federal regulations. It redesigned the port from a six berth to a two berth design. It dramatically reduced acreage and reconfigured the site to reduce impacts on eelgrass and wetlands. It purchased the entire 941 Acre Island and promised to preserve 80% of it in a natural state.

A clear example of excessive federal regulation is the EPA's interpretation of section 404 of the clean water act with regards to eelgrass. In order to preserve <u>one acre</u> of the eelgrass the EPA insists that the pier be constructed 300 feet from shore on pilings. This will increase construction costs by 30 million dollars and create a dock only marginally efficient. Accompanying this expense is the months of time delay required for the MDOT to prepare responses which are usually met with further regulation - an endless circle.

One suggestion which may help with this type of large project is to appoint a federal arbitrator from the outset. This

would be a person or committee and kept as small as possible. This entity would be charged with helping the State through the various agencies concerns for a quicker response. The government needs to understand that time really is money.

Maine voters are naturally disillusioned by the requirement to seek a third permit and after five years, round three has voters wondering if there will ever be an endpoint. A fair and expeditious decision would be a welcomed affirmation of the federal government's desire to work for the people of Maine not against them.

Sincerely,

John D. Worth III

John D. Worth III
President
Maineport Towboats, Inc.

PLANNING BOARD

City of Westbrook, Maine

790 MAIN STREET · WESTBROOK, MAINE 04092

TO: William S. Cohen, Chairman of the Subcommittee on Oversight of Government Management and the District of Columbia.

FROM: James L. Fisk, City Planner

DATE: April 6, 1995

SUBJ: WESTBROOK ENVIRONMENTAL IMPROVEMENTS PROJECT

An Overview

In January of 1994 the City received a shock from its most important resident, the S.D. Warren paper mill announced that it would no longer make plain paper and down-size the work-force accordingly. This action and the stagnant regional economy motivated the Mayor to initiate an aggressive planning effort to diversify the tax base and improve employment opportunities. Inventory and assessment of the City's resources has unveiled an inherent and direct linkage between the City's potential for growth and environmental conditions.

The City's Comprehensive Plan has designated approximately 25% of the City's raw land to be zoned solely for industrial uses. Necessary infrastructure of roads, water, sewer, and power were constructed in suitable areas with the best regional transportation linkage. Presently, there are approximately 50 improved industrial lots available in subdivisions or along major corridors. Within that inventory, 26 lots are assessed unbuildable due changes in the Environmental Protection Agency (EPA) regulatory process.

EPA cease and desist orders, due to designation as Class II wetlands, restrict permitting and has direct economic consequences in the City's operating budget. The loss of tax revenue is an average of $72,000 per year for buildable land. Fully developed lots, with employment opportunities, has the equivalent potential to replace the loss and demolition of the entire S.D. Warren paper mill, one third of the City's value.

Please find attached tabulations of tax records showing that the City has a direct loss of $22,351.00 and $26,560.00 per year in taxes as a result of these lots being unbuildable because of regulatory changes in Glassworld and Saunders Park subdivisions. The owners requested the reclassification of their property

evaluation only after years of struggle with the federal permitting authorities.

The City has been working with owners of the Glasaworld and Saunders Park industrial subdivisions over the past year, to determine the mitigation needed to permit the development of their lots. Unfortunately, we can not talk to the interested parties of the Trapper Brown subdivision, another subdivision with permit problems, because of legal macerations. None can afford to develop these lots because of mitigation costs.

The City believes that the industrial subdivisions that are "wet" and planned as growth areas should be developed. We do not accept the federal requirement to find an alternative to filling these lots for development, because the federal requirement ignores the City's long term planning and real environmental needs. The solution to this calamity is a re-thinking of the relationship between growth and environmental priorities. We believe that the Comprehensive Plan should be the guide for development and conservation practices. We are committed to a direct linkage between growth and environmental improvements. This can be the financial basis for environmental improvements and set priorities for activities that the City should undertake to improve the environment. Again, without growth there is no financial support for these efforts.

Also, federal mandates require that the City undertake actions in order to comply with their objectives. Further, the City Staff have identified other potential activities that have a high priority for improving the environmental quality of our community. The City Staff has begun a search for all possible sources for funding these activities. The City is dedicating tax revenues through a Tax Incremental Financing District with the nexus of this effort being a direct linkage between growth and the financial basis for environmental improvements.

The plan that the City has enacted on April 3, 1995 establishes the linkage needed to set new priorities for industry and the environment. Yet, the federal regulations are an entrenched set of doctrines that are inflexible to the willingness of the City to solve its problems, and may prohibit the City from solving them. Because of this obstacle the City has prepared an ambitious and far reaching plan that will ultimately exceed the federal environmental regulations. The plan sets new priorities for improving the City's environment and the means for funding these improvements. The City believes that the environmental movement needs evolve and views the environment as part of the community, not an onerous regulatory thief.

We are working with State agencies to inventory areas that the City that would improve to allow permitting of the industrial lots. Please find attached the letter from the Director of the

Land Division of DEP, regarding our pilot project. The City Staff firmly believes that activities should improve higher value wetlands and show measurable, end results.

Our recommendations to the Subcommittee is to promote flexibility to the rigid methodology of federal regulations. Establish clear and meaningful environmental objectives. Understand and define the financial basis for environmental improvements. Base the permitting process on fair and equal treatment of individuals and respect due process. Base the standards for permitting on science and ethics, and not on policy.

Testimony of

Michael Kuhns
Director
Division of Water Resource Regulation
Bureau of Land and Water Quality
Maine Department of Environmental Protection

to

the Subcommittee on Oversight of Government Management and the District of Columbia

April 13, 1995

Members of the Subcommittee, I am Michael Kuhns of the Maine Department of Environmental Protection. I was invited here today to provide testimony on my recent experience on the interpretation of the current rules regarding 301(h) facilities. A 301(h) facility means a municipal waste water treatment plant that has a waiver to providing a secondary (biological) level of treatment; only primary (settling) treatment is required. The 301(h) designation refers to the section of the Clean Water Act which allows this type of waiver to secondary treatment. A 301(h), or primary treatment, facility is less expensive to construct, operate, and maintain while being protective of the environment.

In Maine, there are thirteen 301(h) facilities. The average Maine 301(h) facility has 360 users, the smallest has 5 users (Bayville) and the largest has 865 users (Bucksport). The current rules governing 301(h) facilities can require extraordinary monitoring efforts (in-stream and sediment sampling) which are not required of facilities that do provide secondary treatment. Here is where interpretation of the rule comes into play.

The rules specifically limit this extraordinary monitoring to that which is necessary to monitor the effect of the discharge. EPA interpreted this to assume that some extra monitoring would be necessary. While the rule does not specifically state so, the Maine DEP interprets the rules as allowing for an option that calls for no extra monitoring as sufficient to monitor the effect of the discharge. The Maine DEP holds this view due to the results of sampling we have done. Basically, we have seen no impact and, in fact, in the words of our chief scientist, we can't even find the discharge in the river.

It took the Maine DEP and EPA several months to resolve this matter, but we did. One more round of monitoring this summer, performed by the Maine DEP, and the facilities will not have to contend with this type of monitoring again.

In my opinion, EPA appeared to be very interested in protecting the process and in writing NPDES permits for the 301(h) facilities that would be defensible in court, which

is understandable since these rules just came out last summer and they didn't want the first facility through the door to be re-writing the rule.

In conclusion, I feel that the basic sticking point with both the rules and the EPA was that neither one were familiar enough with these facilities to understand the scope of the problem. The 301(h) rule defines a small facility as one that serves 50,000 users. All thirteen facilities in Maine serve about 5000 users. For a regulation that was basically written for Orange County (Los Angeles), it is hard to focus downward and apply it to Bayville, Maine.

WOODARD & CURRAN
ENVIRONMENTAL SERVICES

April 10, 1995

Senator William S. Cohen, Chairman
Subcommittee on Oversight of Government
Management and the District of Columbia
Committee on Governmental Affairs
United States Senate
Washington, DC 20510-6250

Dear Senator Cohen:

Thank you for inviting me to submit this testimony to the Subcommittee on Oversight of Government Management and the District of Columbia regarding federal regulations. My testimony will focus on a recent experience with the Town of Orland, Maine's wastewater collection system project, which indirectly required permits from the U.S. Environmental Protection Agency.

In late 1991, the Town of Orland retained Woodard & Curran, Inc., an environmental engineering consulting firm with which I am employed, to study options for wastewater treatment in the "Village" area of the Town. The Village is a cluster of residences and several small businesses which are situated in close proximity to the Orland River in Hancock County. The study was prompted as a result of enforcement action being threatened by the Maine Department of Environmental Protection. Thirteen residents, who had been identified as having direct discharges of untreated sanitary wastewater into the Orland River, were facing fines of up to $10,000 per day that the discharge continued. As many of these households were connected to a Town owned sewer line, and because the Board of Selectmen sought to assist these homeowners, a feasibility study of the potential options for wastewater treatment was commissioned. Although only thirteen homeowners had been cited, the Town was aware of many other aging or failing wastewater treatment systems in the village. The study therefore encompassed surrounding areas with a total of approximately one hundred properties.

In the course of the study preparation, it was found that in the planning area, many of the homes investigated had failing treatment systems, with eighteen homes discharging directly into the Orland River. The Town of Orland has no municipal water supply, therefore all households have wells, many of which are in close proximity to failing or substandard septic systems. It was also found that

some households' water supply comes from the Orland River downstream of others' wastewater discharges.

In addition, the community maintains an alewife fishery in the River downstream of the Village. The River is also a center of recreational activities including an annual river race each summer. The use of the Orland River for direct sewage discharges is therefore a health risk and incompatible with all of the above activities.

The study, which was completed in February of 1992, recommended a regionalized approach, rather than burdening the small number of users with the capital and operation and maintenance costs of a wastewater treatment plant. The recommended option was to approach the Town of Bucksport, which operates a wastewater treatment plant on the Orland town line, and request that they treat Orland's wastes in their existing facility.

The estimated costs of the project were in excess of $2,000,000, which the small number of users could not afford. In March, 1992, the Town embarked on simultaneous efforts to obtain grant funding of the project while negotiating an agreement with Bucksport to accept the wastewater. Also in March of 1992, it was identified that if Bucksport wished to accept Orland's wastewater, permission might be needed from both Maine's Department of Environmental Protection (DEP) and the U.S. Environmental Protection Agency (EPA), both of which had issued discharge permits to the Bucksport facility. At that time Bucksport's EPA licenses were already in the process of being renewed.

The Town of Bucksport facility is a primary treatment plant, and therefore requires a special 301 (h) waiver from secondary treatment in addition to the basic National Pollution Discharge Elimination System (NPDES) permit which all plants have. Most treatment plants in the United States are required to provide a two-step treatment process (thus called secondary treatment). Some smaller communities, such as Bucksport, have been granted waivers where it can be demonstrated that there are no adverse effects on receiving waters resulting from their discharge.

At the time of my first contact with EPA licensing staff at the Region 1 Office in Boston on March 11, 1992, Bucksport's plant was having compliance problems with their licensed parameters. Initial reaction was that the EPA would support

the State of Maine's efforts to eliminate overboard discharges, and if Bucksport could come into compliance and demonstrate this for a period of time, it was possible for Orland to connect. This opinion was confirmed by conversations on March 25, 1992 with EPA enforcement staff who felt that once causes for past violations had been dealt with, that Bucksport would be allowed to accept Orland's wastewater.

In early April, 1992, EPA informed Orland that they had received funds for a water quality study of the Penobscot River (the receiving water for the plant's effluent) and that this could delay processing of Bucksport's license, as they would want to utilize the study results to evaluate the impact of the plant's discharge on the river. They also noted at this time that EPA may not specifically have to give permission to Bucksport for Orland to tie into the plant if they have sufficient capacity within their licensed flow limits. At the end of April, 1992, they reversed this position, stating that a letter from Bucksport formally requesting Orland's inclusion in their license renewal was required. EPA also stated that the license renewal would be processed after the water quality study was completed in August or September of 1992. The report was issued in October of 1992 and concluded that Bucksport's discharge had no measurable impact on the river, therefore EPA concluded that the 301 (h) waiver would be renewed.

To this point, although we were frustrated by the lack of commitment to a firm date as to when the licenses could be processed, no damage had come to the Orland project. Orland and Bucksport were still working on the intermunicipal agreement. Bucksport was adamant, however, from the outset that they would not enter into an agreement with Orland until their licenses were renewed. A portion of the necessary funding had been secured, but additional monies were not yet approved. The uncertainty over what restrictions the new licenses would contain and when EPA was going to issue them was complicating the Bucksport negotiations, because they felt no urgency to finalize an agreement they would not sign until EPA's licensing was issued.

Contact with EPA continued through the end of 1992. On February 2, 1993, the EPA compliance division requested that Bucksport provide a list of capital improvements which would be done at their plant to promote compliance with effluent limits. A response to this request was provided by letter dated March 2, 1993. We attempted to secure a response to this letter, and a meeting of

all parties was suggested by EPA. There were no available dates for EPA staff until May 11, 1993, when a meeting did take place. Because Bucksport representatives had not attended the first meeting, a second meeting was held by telephone on June 16, 1993.

On July 9, 1993, the Town of Bucksport was notified by the EPA that their schedule of capital improvement was acceptable, and that Orland's tie-in was also acceptable. Bucksport continued to be in compliance with their agreed schedule and implemented all required projects in 1993.

At this point (July 9, 1993), we believed that all technical issues had been resolved regarding Bucksport's relicensing and that the license renewals would soon be forthcoming. Orland's negotiations with Bucksport were nearly resolved, and execution of the agreement was to be completed on receipt of the licenses. Further, all necessary funds to design and construct the project were in place.

As the only outstanding issue which needed to be resolved was the receipt of the EPA permits, design of the project commenced on the assumption that they would soon be issued. On September 8, 1993, I inquired as to when the permits would be issued, and was told that Bucksport was "a small discharge...not a high priority", and could not get any estimate of when the licenses would be issued.

Six conversations with EPA staff members between September and January 13, 1994 yielded similar responses. I was unable to identify who was responsible for determining the schedule of permit issuance, or even who would write the permits. Simultaneously with my efforts on Orland's behalf during this time period, Town of Bucksport staff were also attempting to persuade EPA to complete the renewal process, with similar results. On January 13, 1994, a new permit writer was identified, who told me he expected that the license would be done within a month.

Timing was becoming critical as the 1994 construction season approached and design plans were being completed. The project funding agencies (the Maine Department of Environmental Protection, the Maine Department of Community and Economic Development through a federal Community Block Development Grant, and Farmers Home Administration) were all anxious to bid the project to contractors and commence construction. Most of all, residents of the Town of

Orland were hopeful that they would soon see an end to the pollution and health risks present in their community.

On January 26, 1994, I called EPA to check on the permits' progress. I was then told that the permit process would be extended for three to six months to allow comment by the National Marine Fisheries agency because of a pending study of an endangered species, the shortnosed sturgeon, in the Penobscot River. A February 2, 1994, letter from EPA to Bucksport confirmed the bad news, anticipating that the timeline for the process would be extended at least beyond 90 days.

Faced with the frustration of the past two years, and with no clear date of license issuance in sight, Orland wrote letters to both (then) Representative Olympia Snowe's office and to your office, Senator Cohen, requesting assistance in expediting the process. Although staff from both offices made inquiries, it was through the efforts of Judy Cuddy at your Bangor office, who made sometimes daily contact with EPA, that the license draft was finally issued. Even with that outside pressure which made Bucksport a higher priority, a draft license was not issued until August 29, 1994. The final license was issued in October, 1994.

As for the shortnosed sturgeon, none were ever found in the Penobscot River. In fact, in a June 29, 1994 letter from EPA to National Marine Fisheries, they noted that the habitat in the Bucksport area was not suitable for shortnosed sturgeon spawning due to high salinity.

As a result of the repeated delays in issuing the license, Orland missed the 1994 construction season (except for one weeks worth of work which was completed in November). I would estimate that engineering fees in excess of $10,000 were spent resolving this issue after all technical matters were settled.

This case study clearly illustrates how regulatory delays can impact a project. In this situation, it was not necessarily the regulations themselves which caused the delays, but their inefficient application to what should have been a simple license renewal process for a small community. Unfortunately this is not a unique situation, as NPDES license renewals can often take years. This does not always cause a hardship to existing facilities, which continue to operate under their expired licenses. For new applicants, however, particularly commercial entities

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who could not afford the delays which were withstood by this grant funded municipal project, such delays would be devastating.

As for recommendations as to how such delays could be avoided in the future, a combination of regulatory changes and implementation schedules would improve matters. The State of Maine has been successful in developing "Permit-by-Rule" style regulations which allow simple projects which fit specific criteria and meet certain standards to be automatically allowed, with prior notification to regulatory agencies. There is a time period after the submittal of notifications during which regulators can identify projects which they feel warrant special attention and require a more extensive application to be submitted. For full applications, a mandated schedule for processing could be required to prevent extended review processes. Staffing at EPA or other regulatory agencies would have to be sufficient to allow this to happen. I am uncertain at this time whether lack of staff or lack of accountability is the reason for present process delays.

A second idea could be to extend the license terms for NPDES licenses from the present five year terms to seven or ten year licenses. EPA could reserve authority to limit licenses for plants discharging to sensitive areas to shorter time periods. As existing rules allow, plants which are not complying with their licenses could be enforced upon at any time.

I thank you for this opportunity to contribute to your Subcommittee's efforts in federal regulatory reform. I would be pleased to provide further information or assist the Subcommittee in any way as you proceed in this endeavor.

Very truly yours,

WOODARD & CURRAN INC.

Mandy J. Holway, P.E.
Project Manager

MJH/dam
93327.07

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Secretary

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Treasurer

TO: Senator William S. Cohen, Chairman
Subcommittee on Oversight of Governmental Management

FROM: York-Cumberland Housing Development Corporation

DATE: April 13, 1995

RE: Improving the Regulatory Process

York-Cumberland Housing Development Corporation (YCHDC) is a 501(c)(3) non-profit organization incorporated in 1972 in the state of Maine. Its mission is to provide and preserve decent, safe and affordable housing for low income people in Maine. Since 1972, YCHDC has developed over 1,300 units of affordable housing in 69 developments for both low income elderly and family households. These developments include both new construction and acquisition/rehab of existing dwellings.

HUD SECTION 202 PROGRAM

Nearly half of YCHDC's developments were funded in whole or in part utilizing the HUD Section 202 program. In addition, YCHDC is currently serving as a consultant on a development in Eliot, Maine consisting of 41 units which will utilize the Section 202 Capital Advance program.

Obtaining funding through the 202 program continues to be a cumbersome process, both in terms of time and paperwork. The process has at least five phases: fund reservation, conditional commitment, firm commitment, initial closing and final closing. The submittals for each of these phases contain upwards of 40 exhibits, with many instances of duplication. An original and six copies are required for each submittal. The entire process from fund reservation to actual accessing of funds is typically a minimum of 18 months, and it is not unusual for final closings to occur years after the process is begun.

One of the problems this process creates is finding a seller of raw land or buildings who is willing to wait for this long period before he receives his money. Suitable land near services for developments for elderly households is scarce. With the added burden of finding a seller of such prime land who is willing to wait a year and a half for closing, it becomes

even more difficult to develop housing for the elderly using these funds.

The long process further burdens a non-profit organization because predevelopment costs such as architectural and engineering fees must be incurred long before there is money available for reimbursement from the 202 funds. Grant monies or low/no interest predevelopment loans must be obtained, necessitating another loan application and processing period. In addition, the new owner entity must deposit a Minimum Capital Investment which can be as much as $10,000 depending on the amount of the capital advance at least a year before initial closing will occur. Tying up this amount of money for such a long period is difficult for non-profit entities and reduces their ability to develop other affordable housing during this time.

Perhaps the greatest burden is borne by the elderly households who are on waiting lists for safe, decent and affordable housing. Because these lists for housing for low income elderly in Cumberland and York counties are so long and because turnover is so low, qualified applicants are already waiting from one to often five or more years for housing. Adding a year and half more just for the funding process makes their wait even longer.

Another HUD 202 issue is the requirement that developments in metropolitan areas consist of a minimum of 40 units. There are several small towns in York and Cumberland Counties which are nonetheless in a metropolitan statistical area; however, the need is more for 20 or 24 units, not 40.

Recommendations:

Bring HUD loan processing in line with conventional lending procedures by reducing the number of separate submittals and shortening the processing time to 60 days after fund reservation. These changes will solve the problem of time frames for predevelopment loans and Minimum Capital Investments.

Base sizes of developments on demonstrated need, not on an arbitrary minimum number of units simply because a development will be in a metropolitan statistical area.

COST CONTAINMENT AND HEAT SYSTEM CONVERSIONS:

Several of the HUD 202 properties which YCHDC developed have electric heat. Electric heat was installed as a cost containment measure required by HUD (Note: cost containment regulations are no longer in effect). Further, HUD disallowed baseboard electric heat in bathrooms

where the available bathroom wall is shared with an interior wall, even though the interior wall may be unheated. Not only is electric heat expensive, it does not comfortably heat a room occupied by an elderly person, and the bathrooms in these developments are understandably cold. Other items disallowed as a result of cost containment which continue to affect the comfort and security of YCHDC's residents as well as operating costs are:

- no rain diverters over entrances;
- no handrails on sloped walkways (since corrected at considerable expense);
- no energy-efficient windows which met Maine energy standards;
- no pole-mounted exterior lighting (wall-mounted lighting provides less illumination and security).

In an effort to stabilize and reduce Section 8 and HUD 202/8 rents as well as increase the comfort of its residents, YCHDC began exploring the feasibility of heat conversions from electric to oil or gas in 1993.

These efforts were supported by the HUD Field Office. For older properties with adequate reserves, YCHDC was given permission by the Field Office to proceed with conversions so long as certain conditions were met, e.g., payback of 5 years or less and design review. For newer, budget-based developments that had not had the time or rent structure to permit the build-up of adequate reserves, conversions were problematic. One the one hand, cost-savings were more imperative; on the other, the developments lacked adequate capital to make improvements to effect significant savings (more than 60% of current heating costs).

In early 1994, one of our fuel oil vendors (who happened to be on the Board of a bank with whom YCHDC had a relationship) suggested bank loans to supplement the reserves. The bank offered an average of $42,000 per development utilizing unsecured, fixed rate, five-year term loans. The loans would be repaid from savings in operations, specifically from lower fuel costs. On April 1, 1994, YCHDC wrote to HUD Headquarters (the HUD Field Office did not have authority to permit the use of rental income to repay "secondary" debt). After 30 days, the letter was followed up with a phone call. This call was transferred four times before someone requested that YCHDC fax him a copy of the letter since the whereabouts of the letter was unknown. Two weeks later, YCHDC received a response which requested additional information, most of which was contained in the original letter. This information was forwarded to the HUD Field Office as instructed, which forwarded it to HUD Headquarters along with an affirmative

approval, although the HUD Field Office has indicated it did receive a directive to approve the request just last week. However, the length of time it has taken to approve the request will be costly. Since last April, interest rates have risen by 3%. This increase may affect the feasibility of YCHDC's proposal. Further, any savings anticipated by converting several systems at once are now lost. HUD Headquarters is now requiring review of final loan documents which will delay installation even further. The "reinvented HUD" called for more authority at the Field Office to avoid delays such as these.

PARTIAL RELEASE OF SECURITY

The offices of YCHDC are part of a complex of 20 units of rental housing on 7.32 acres for low income elderly in Gorham developed with HUD Section 202 funds. YCHDC is planning to develop 48 units of rental housing for low income elderly utilizing FmHA 515 funds on a piece of property which abuts this complex. The new site needs a portion of the existing 7.32 acres in order to provide a second means of access from the main road.

In December of 1993, YCHDC made a request to the HUD Field Office for a partial release of security for 1.72 acres of the 7.32 acres. In March, the Field Office requested that an application be submitted to HUD Headquarters in Manchester. This application was submitted in April. On June 14, YCHDC received a letter from HUD Headquarters indicating the value of the 1.72 acres was $40,000, which would have to be paid to reduce the mortgage on the property. Also tied to this determination to release part of the security was a request by HUD to relinquish the automatic adjustment to contract rents for some of the other 202 developments YCHDC owned, and to establish residual receipt accounts for use in supplying supportive services and service coordination.

YCHDC responded to this letter on June 23, pointing out that HUD was willing to pay only $30,000 in 1983 for the entire parcel of 7.32 acres even though its appraised value at the time was higher. Now HUD wanted $10,000 more for only 1/4 of the entire parcel and the FmHA loan could not absorb this. Furthermore, the development on the 7.32 acres did not receive an automatic adjustment to contract rents and therefore, at least in this instance, could not therefore relinquish it. To tie the operation of other 202 developments to an agreement about this development was not reasonable.

YCHDC did not receive a response to this letter until three months later on September 22, 1994 (9 months after initial contact). HUD agreed to approve a residual receipts note in the amount of $40,000. Although no

term was given, YCHDC had requested 50 years to coincide with the term of the FmHA loan.

There have been delays in receiving the FmHA funds; however, had these funds been accessible, the amount of time it took HUD to process YCHDC's request and agree to allow a residual receipts note could have seriously hampered YCHDC's ability to access the FmHA funds.

Statement
of
John McCurdy
April 13, 1995

Until 1991 McCurdy Fish Company was a successful family business. It had been in operation for 90 years and was the last commercial hard smoked herring industry in the United States. For 20 years I was the owner and manager of this company. At the time of closing in May of 1991, McCurdy Fish Company employed 20 people in a community with a population of 1880.

In May 1990 Donald Stresser of the Food and Drug Administration office in Augusta, Maine arrived at my business with Policy Guide 7108.17. This policy, which concerns the possibility of botulism spores in uneviscerated fish, was formulated as the result of 3 deaths in the 1980's due to the consumption of a fresh water whitefish called Lapchunka. I, however, precessed sea herring, a salt water fish, but both types of fish would be included under a blanket ruling by the FDA. The regulation proposed by the FDA states that all fish must be eviscerated before the salting process. For 90 years all herring at McCurdy Fish Company were eviscerated <u>after</u> the salting process.

Knowing that it would be impossible for my company to comply with this regulation, I immediately called Thomas Gardine, Supervisory Consumer Safety Officer, Division of Regulatory Guidance Center for Food Safety and Applied Nutrition in Washington. In the course of our conversation I discussed the fact that the Canadian processors of smoked sea herring follow the same steps as I do; they salt the herring with the viscera intact. I then reminded him that this Canadian product will continue to be sold to United States markets and yet I will be forced to close.

Mr. Gardine wrote David Bevan, Director, Field Operations Branch, Ottawa, Canada in 1990 to explain this new regulation. I talked with herring processors in Canada in June 1990 and they had not been informed of this change in policy. Where was the concern in Canada for Mr. Gardine's letter particularly when the FDA had stated that failure to eviscerate fish before salting posed "a potentially life-threatening, acute health hazard."

In June 1990 I wrote letters to Senator William Cohen, Senator George Mitchell, and Congresswoman Olympia Snore explaining my dilemma. Senator Cohen, as well as John Veroneau of his staff, worked diligently on my behalf. Due to his intervention with the FDA, McCurdy Fish Company was able to remain open from May 1990 through May 1991, and he continued to try and resolve this situation for the next two years.

Throughout 1990, 1991, and 1992 I did what I could to protest this regulation for which there was no statistical

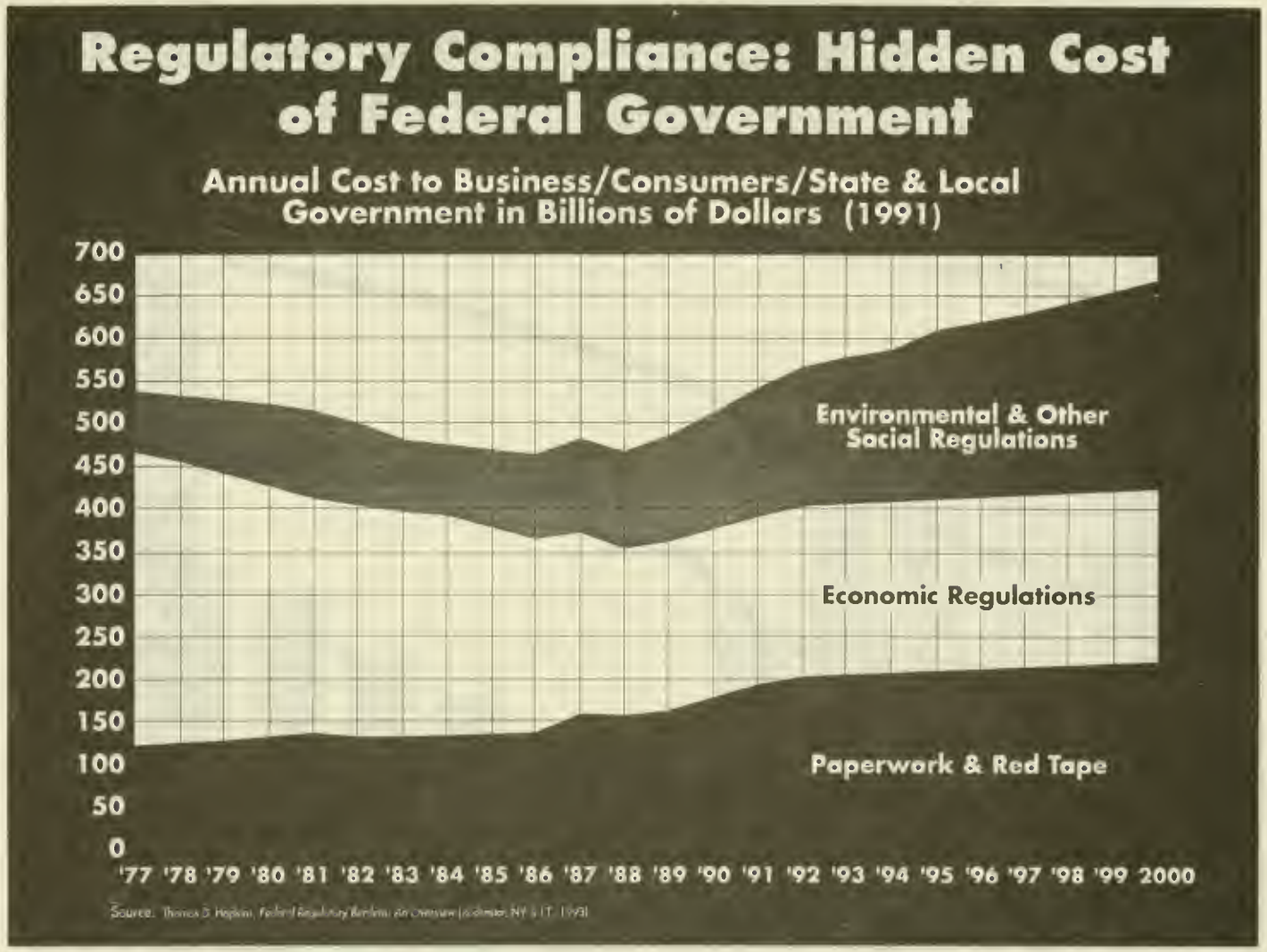
evidence to show that smoked sea herring could pose a botulism threat. I was in contact with various FDA agents, I wrote endless letters, made phone calls, and even though the FDA tested my fish as they did every year, I sent herring to a laboratory in California to be tested. All tests were negative for the presence of botulism spores. In fact, in my 20 years as owner of this once thriving company, we produced 48 million fillets and not one fillet was ever returned for any reason.

On the average, each boatload of fish, McCurdy Fish Company processed contained 60 hogheads (73,500 pounds or 150,720 fish). These whole fish were pumped from a boat to the salting tanks in about an hour. To eviscerate these fish before going into the tanks would require six men approximately 6-10 day to accomplish. During this period of time most of the fish would spoil before they ever reached the tanks. Nevertheless, the FDA insisted that all herring be eviscerated before salting.

An additional demand from the FDA included refrigerating the salting tanks. Refrigerating the tanks and purchasing a gutting machine would not have been feasible for a small business with a yearly gross profit of $250,000. Refrigeration of the tanks would cost $100,000 and a new gutting machine for evisceration would cost in the excess of $75,000. Therefore, my only choice was to close this business which then left myself and 20 people with families without jobs.

On Wednesday April 5, 1995 I personally spoke with a Canadian processor of smoked herring. No governmental regulation have been issued to change the salting and smoking process of herring in Canada. Their herring are still being eviscerated <u>after</u> the salting just as they were done here for 90 years. These Canadian fish are being sold in markets throughout the United States while McCurdy Fish Company of Lubec, Maine is no longer in business.

In my opinion, I feel that the governmental process should judge each industry on its own merit as opposed to grouping all similar industries together. In my case, sea herring, a salt water fish, was compared to Kapchunka, a fresh water whitefish. I would also like to see an end of the Food and Drug's double standard between the United States and Canadian processors when the exact same product is involved.


Regulatory Compliance: Hidden Cost of Federal Government
Annual Cost to Business/Consumers/State & Local Government in Billions of Dollars (1991)
700
650
600
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350
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250
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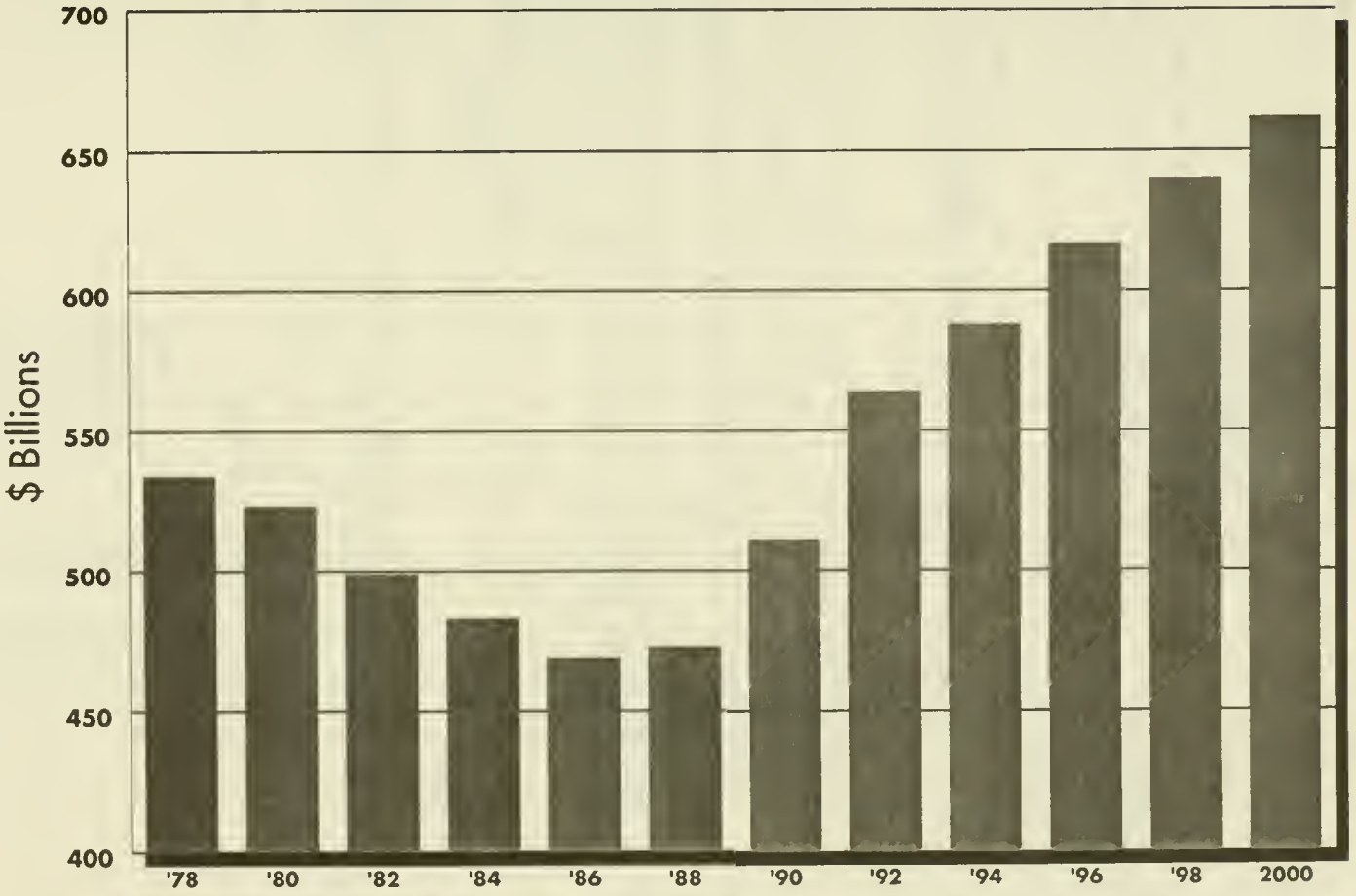
'77 '78 '79 '80 '81 '82 '83 '84 '85 '86 '87 '88 '89 '90 '91 '92 '93 '94 '95 '96 '97 '98 '99 2000
Environmental & Other Social Regulations
Economic Regulations
Paperwork & Red Tape

Annual Regulatory Costs
In Billions of Dollars (1991)
Paperwork & Red Tape
Environmental Regulation
Other Social Regulation
$ Billions
250
225
200
175
150
125
100
75
50
25
0
'77 '78 '79 '80 '81 '82 '83 '84 '85 '86 '87 '88 '89 '90 '91 '92 '93 '94 '95 '96 '97 '98 '99 2000

Total Annual Regulatory Costs
In Billions of Dollars (1991)



Source: Thomas D. Hopkins, *Regulatory Policy in Canoda and the United States* (Rochester, NY, R.I.T., 1992)

TELEPHONE 207-622-3701
FAX 207-621-0360

Augusta Water District
Augusta, Maine 04338-0506

P.O. BOX 506

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SCOTT J. MINOR
ASS'T GEN. MGR

THERESA N. BROWN
DIRECTOR OF FINANCE,
TREASURER

BANGOR CITY HALL FIELD HEARING
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT

Dear Sir(s):

The following is a brief analysis of the Augusta Water District rate increases from 1986 to present. This analysis demonstrates the economic burden experienced by the District's customers resulting from substantial rate increases that were required to fund approximately $19,000,000 worth of capitol improvement work in order to meet compliance with the provisions established in 1986 SAFE DRINKING WATER ACT re-authorization.

The District believes such unfunded Federal mandates are grossly unfair to the citizenship of the United States in general, however, this is accentuated in a state like Maine which, as you well know continues to lag behind with regard to economic recovery.

The District's customers would be exceedingly grateful for any economic assistance that could be applied toward off-setting a portion of the mandated capital improvement expenses.

DATA:

- THIS COST ANALYSIS IS BASED ON THE AVERAGE RESIDENTIAL WATER BILL USING 2200 CF/QUARTER OR 8800 CF/YEAR. SEWER CHARGES ARE NOT INCLUDED IN THIS ANALYSIS.

- METER SIZE IS MINIMUM AT 5/8" DIAMETER

- INFLATIONARY CALCULATIONS BASED ON THE CONSUMER PRICE INDEX (CPI) FOR ALL URBAN CONSUMERS.

1986 - 108.8
1987 - 112.1 - 3.0% CHANGE
1988 - 116.5 - 3.9% CHANGE
1989 - 122.3 - 5.0% CHANGE
1990 - 128.7 - 5.2% CHANGE
1991 - 135.0 - 4.9% CHANGE
1992 - 139.3 - 3.2% CHANGE
1993 - 143.6 - 3.1% CHANGE
1994 - 147.2 - 2.5% CHANGE
1995 - 151.4 - 2.9% CHANGE

AUGUSTA WATER DISTRICT
AUGUSTA, MAINE

REVIEW OF RATES:

1986 TIERED RATES = ($2.05 x 12) + ($1.05 x 10).... $35.10/QTR
... $140.40/YR

ADJUSTED FOR INFLATION @ CPI TO 3/01/93..... $185.24/YR

ADJUSTED FOR INFLATION @ CPI TO 3/01/95..... $195.38/YR

AVERAGE 1986 RATE (ACTUAL)..... $1.59/100 CF

AVERAGE 1986 RATE ADJUSTED @ CPI TO 3/01/93.. $2.11/100 CF

AVERAGE 1986 RATE ADJUSTED @ CPI TO 3/01/95.. $2.22/100 CF

1993 FLAT RATES (CURRENT) = 42.70 + ($2.89 x 19)..$97.61/QTR
... $390.44/YR

% VARIANCE TO CPI AS OF 3/01/93..... 210% ABOVE

% VARIANCE TO CPI AS OF 3/01/95..... 200% ABOVE

Please do not hesitate to contact me if you should have any questions or require additional information.

Very best regards,

Scott J. Minor

Scott J. Minor, P.E.
General Manager

TESTIMONY OF SHARON S. TISHER
ON BEHALF OF THE MAINE ORGANIC FARMERS AND GARDENERS ASSOCIATION
ADDRESSED TO SENATOR WILLIAM S. COHEN
FIELD HEARING ON REGULATORY REFORM
BANGOR, APRIL 13, 1995

I am a member of the Board of Directors of the Maine Organic Farmers and Gardeners Association (MOFGA), chair of its Public Policy Committee, and authorized by the MOFGA Board to express this organization's position with respect to proposed legislation in the United States Congress regarding "regulatory reform" and "takings." I am also an attorney and an Adjunct Professor of Environmental Law at the University of Maine. I have recently authored a law review article on Constitutional takings law ("Everglades Restoration: A Constitutional Takings Analysis," 10 Journal of Land Use & Environmental Law No. 1 (Fall 1994)), and in my professional capacity have thought much about the question, raised implicitly by the "regulatory reform" movement, of the effectiveness of our federal environmental and health and safety legislation.

As you know, MOFGA has more than 3000 members and subscribers, who represent a broad spectrum of citizens - not just organic or sustainable farmers and gardeners, but also consumers who care alot about the healthfulness of our food, and the preservation of rural life in Maine and of local, sustainable farming and food production. Every September, as many as 60,000 friends and supporters of MOFGA convene at the Common Ground Country Fair, to celebrate rural living and sustainable values. We believe that organic farming is growing beyond a niche, to a "growth industry" in Maine. In this sense, we are "business people" as well.

MOFGA is mindful, as we approach the 25th anniversary of the first Earth Day, that we must be deeply grateful for the effectiveness of our federal regulatory system in protecting our clean soils, water and air. Without the major federal environmental statutes enacted over the last 25 years, and the effectiveness of the Environmental Protection Agency and state regulators in enforcing them, there might be much less to celebrate about rural life in Maine. Development practices which destroy wetlands, overpopulate waterfront property, result in contamination of our soils and groundwater, and drive up the price of real estate, will directly adversely impact the

quality of life in Maine, and our ability to continue the practice of organic and sustainable farming in Maine. Clean water and clean air and appropriate regulatory restraints on uses of pesticides and disposal of toxic wastes are essential to healthful and productive crop cultivation - not to mention our health and the health and well-being of future generations. We oppose the "risk assessment," "cost/benefit analysis," and "takings" provisions of the Contract with America's regulatory reform package, currently embodied in S. 291 and S. 605, precisely because they jeopardize these values that are so important to our lives and work in Maine.

We believe that S. 605's "takings" provisions would directly affect, and indeed cripple, federal protection of Maine's wetlands and other fragile natural resources from development. This bill is prominently supported by realty organizations and commercial and residential development interests. The "takings" provisions place a prohibitive "tax" on the public's protection of its natural resources to benefit polluters and developers (obviously, and ironically, without any of the cost/benefit analysis which S. 291 seeks to impose on federal regulations). They also ignore the very substantial direct and indirect public subsidies which create "fair market value" in the first instance (see E. Thompson, "The Government Giveth," The Environmental Forum, Vol. 11, No. 2 (March/April 1994). As Maine's own landmark decision of State v. Johnson, 265 A. 2d 711 (Me. 1970), demonstrates, existing State and Federal Constitutional takings provisions are more than adequate to protect private property owners' reasonable expectations of development. * We trust that, as one who must appreciate the unique and fragile environment of rural Maine, you will not support S. 605.

As organic farmers and consumers who are deeply concerned about the overuse and misuse of pesticides, we believe that implementation of the "risk assessment" and "cost/benefit analysis" aspects of S. 291 would result in an evisceration of the government's ability to effectively protect citizens from the production and misuse of harmful chemicals. You must be aware of the recent comments of Tom DeLay, the House Majority Whip and an exterminator by profession, who opined that it was a mistake to ban DDT, that DDT was perfectly safe, and that he could think of no federal regulation that was worthwhile (Wall Street Journal, 3/6/95). The Natural Resources

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* One of the myths frequently relied upon by proponents of the "takings" bills is that existing Constitutional provisions only provide compensation when regulations effective reduce all of a property owner's land to a zero market value. This is quite incorrect. While the 100% reduction in value is the "easy" case, the careful balancing act that courts engage in allow for compensation in many cases of less than total loss of market value. State v. Johnson is the perfect example. Your examination of that case will reveal that Mr. Johnson, a developer on Wells marshlands, had already developed approximately one third of his tract. Still, the Maine Supreme Court allowed compensation for the diminution in value of the remaining two thirds caused by wetlands regulations. One might well argue that the Constitutional analysis in that case too generously upheld the developer's expectations of maximized profit over the public's interest in preserving wetlands. Certainly the case suggests no justification for legislative enactment of a harsher per se takings rule, which would preclude the careful case by case judicial analysis that has been the foundation of our Constitutional law for two centuries.

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Defense Council's analysis of H.R. 9 ("Breach of Faith," Feb. 1995), which we hope you will study in reconsideration of your support for S. 291, concludes that had those provisions been in effect in the 1970s and 80s, DDT and other banned and highly toxic pesticides would still be on the market. As the representative of the State whose eagle population still has detectable levels of DDT, which appear to be still adversely affecting their reproductive capacity (Maine Times, July 15, 1994), we would hope you would have a radically different perspective on the importance of federal regulation from Mr. DeLay.* In requiring elaborate and costly analysis of every federal regulation, without appropriating the funds to perform such analysis, S. 291 is, like S. 605, another "unfunded mandate" with a thinly veiled purpose to drive federal regulation to a grinding halt.

It is our view that the Contract with America's "regulatory reform" package arises from a very inaccurate perspective on the real accomplishments of federal environmental and health and safety regulation. For a fairer perspective on those accomplishments, I enclose an article from this week's The New Yorker. We may not be as optimistic as Mr. Easterbrook on some fronts, and any claim of success of this country's regulation of pesticides production and use is notably absent even from Mr. Easterbrook's analysis. However, it is clear that now is the time to celebrate and build upon the successes of the past 25 years, and not to take a wrecking ball to the regulatory architecture responsible for those successes. In closing, we urge you to reconsider your support of S. 291, and to oppose S. 605.

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* Indeed, in addition to the impact on wildlife, for a careful analysis of the indirect costs of pesticides used currently in the United States, amounting to $8 billion annually, see D. Pimentel, "Environmental and Economic Costs of Pesticides Use," BioScience Vol. 42 No. 10 (Nov. 1992). The restraints on pesticide production and use in FIFRA need to be strengthened, not weakened.

DEPT. OF DISPUTATION

HERE COMES THE SUN

On the twenty-fifth anniversary of Earth Day, it is clear that environmental protection has been a raging success. So why do we resist the good news?

BY GREGG EASTERBROOK

FEW ideas are more deeply entrenched in our political culture than that of impending ecological doom. Beginning in 1962, when Rachel Carson warned readers of this magazine that pollution was a threat to all human and animal life on the planet, pessimistic appraisals of the health of the environment have been issued with increasing urgency. And yet, thanks in large part to her warnings, a powerful political movement was born—its coming-out party, the first Earth Day demonstration, took place on April 22nd, twenty-five years ago—and a series of landmark environmental bills became law: the Clean Air Act (1970), the Clean Water Act (1972), and the Endangered Species Act (1973). These laws and their equivalents in Western Europe, along with a vast array of private efforts spurred by the environmental consciousness that Carson helped raise, have been a stunning success. In both the United States and Europe, environmental trends are, for the most part, positive; and environmental regulations, far from being burdensome and expensive, have proved to be strikingly effective, have cost less than was anticipated, and have made the economies of the countries that have put them into effect stronger, not weaker.

Nevertheless, the vocabulary of environmentalism has continued to be dominated by images of futility, crisis, and decline. In 1988, Thomas Berry, an essayist popular among ecologists, wrote that "the planet cannot long endure present modes of human exploitation." In 1990, Gaylord Nelson, the former senator from Wisconsin, who was a prime mover behind the first Earth Day, said that environmental problems "are a greater threat to Earth's life-sustaining systems than a nuclear war." And in 1993 Vice-President Al Gore said that the planet now was suffering "grave and perhaps irreparable damage." But, at least insofar as the Western world is concerned, this line of thought is an anachronism, rendered obsolete by its own success. Nor are environmentalists the only people reluctant to acknowledge the good news; advocates at both ends of the political spectrum, each side for its own reasons, seem to have tacitly agreed to play it down. The left is afraid of the environmental good news because it undercuts stylish pessimism; the right is afraid of the good news because it shows that government regulations might occasionally amount to something other than wickedness incarnate, and actually produce benefits at an affordable cost.

This is a bad bargain—for liberals especially. Their philosophy is under siege on many fronts—crime, welfare, medical care, and education, among others. So why not trumpet the astonishing, and continuing, record of success in environmental protection?

CONSIDER some of what has been accomplished in this country in the quarter century since the first Earth Day. Thanks to legislation, technical ad-

LAURIE ROSENWALD

vances, and lawsuits that have forced polluters to pay liability costs, America's air and water are getting cleaner, forests are expanding, and many other environmental indicators are on the upswing.

Smog has declined by about a third, though there are now eighty-five per cent more vehicles being driven a hundred and five per cent more miles a year. In Los Angeles, the decline has been particularly dramatic: smog has decreased by almost fifty per cent, during a time when the city's vehicle population has risen sixty-five per cent. Since 1970, airborne levels of lead have declined ninety-eight per cent nationwide; annual emissions of carbon monoxide are down twenty-four per cent; emissions of sulfur dioxide, the chief cause of acid rain, have fallen thirty per cent, even as the use of coal, the main source of sulfur, has almost doubled; and emissions of fine soot, which causes respiratory disease, have fallen seventy-eight per cent. Air-quality trends are sufficiently positive so that several urban areas, such as Detroit and Kansas City, have been removed from the federal smog-watch list, and none have been added.

Signs of improved water quality are equally in evidence. In 1972, only a third of the bodies of water in the United States were safe for fishing and swimming. Today, almost two-thirds are safe, and the proportion continues to rise. Excessive phosphorus, a barometer of pollution, peaked in the Great Lakes around fifteen years ago; readings now are between forty and seventy per cent lower. Boston Harbor, Chesapeake Bay, Long Island Sound, Puget Sound, and other bodies of water that were once on the verge of biological death are showing steady improvement.

Another sign of progress is the decline of toxic hazards. Quarrels over the final disposition of old chemical-waste dumps continue to bedevil courts and politicians, but, because of tight regulations and industrial liability, the creation of new toxic dumps has nearly stopped, and is unlikely ever to resume. One of the largest chemical-waste sites, the Rocky Mountain Arsenal, near Denver, where nerve gases, pesticides, and firebombs were once manufactured, used to be described as the deadliest place on earth. In 1992, it was designated a National Wildlife Refuge; a number of rare species now thrive there. Their presence hardly proves that chemical wastes are somehow good for birds and animals, of course, but it does show that toxic wastes can be and are being contained. Just between 1988 and 1992, American industry's toxic emissions fell thirty-five per cent, even as petrochemical production expanded. Thanks to tight regulation of the dangerous compound dioxin, an estimated thirty pounds of this substance will be emitted in 1995 by all known United States sources combined, which suggests that the problem is almost certainly under control.

In recent years, several worrisome environmental trends have either declined from their peak or ended altogether. The amount of household trash dumped in landfills, for example, has been diminishing since the late nineteen-eighties, when recycling began to take hold. Recycling, which was a fringe idea a decade ago, is now a major growth industry, and is converting more than twenty per cent of America's municipal wastes into useful products. Despite start-up problems, many municipal recycling programs now pay for themselves. Emissions of chlorofluorocarbons, which deplete the ozone layer, have been declining since 1987. Studies now suggest that ozone-layer replenishment may begin within a decade. Dozens of American cities once dumped raw sludge into the ocean. This category of pollution passed into history in 1992, when the final load of New York City sludge slithered off a barge imaginatively named Spring Brook. Today, instead of being dumped into the ocean, municipal sludge is either disposed of in regulated landfills or, increasingly, put to good use as fertilizer.

It may be hard to believe, but efficient new manufacturing techniques, recycling, and other technological advances are allowing us to consume some natural resources at lower rates. Eric Larson, of Princeton University, and his colleagues have shown that American per-capita use of ammonia, cement, aluminum, chlorine, and steel has been flat or falling for a decade or more.

Even though Americans use more paper than they did a decade ago, this country is increasingly covered by a canopy of trees. It is commonly assumed that America is undergoing deforestation, but reforestation has been the trend for at least half a century. Everyone

knows that in some parts of the United States urban acreage is expanding; what is much less widely recognized is that, in some areas, forest acreage is expanding rapidly, too. (For example, in the mid-eighteen-hundreds about a third of Massachusetts was wooded; today, though the state has six times the population, three-fifths of its area is forestland.) High-yield agriculture allows farmers to produce more food from the same or less land, and much of the acreage that is withdrawn from agriculture ends up reverting to woodland or prairie. The supposed crisis of the vanishing American farm, which has been regularly bemoaned throughout the postwar era, has in fact been a blessing to nature. And acid rain has proved less damaging to trees than was once projected, and is in decline. At the same time, the acreage of America held in preservation has risen steadily through this century and now amounts to more than two times the area of California. Last year alone, 7.4 million acres of ancient forest in the Pacific Northwest were put into reserves by President Clinton, and nearly ten million acres of Southwestern desert were declared off limits by Congress—a combined area larger than the state of West Virginia.

America's record of protecting species threatened with extinction, which is often depicted as dismal, is in truth enviable. Since 1973, when the Endangered Species Act took effect, seven animal species in North America have disappeared, but several hundred others once considered certain to die out continue to exist in the wild. A number of species, including the bald eagle and the Arctic peregrine falcon, are doing so well that they have been or are being taken off the priority-protection list.

EVEN more extraordinary than America's environmental progress of the past generation is the fact that these advances have been achieved in affordable and practical ways. When pollution controls for cars were first proposed, in 1970, automakers predicted that the required systems would cost about three thousand dollars per car in today's dollars. Instead, controls now add between five hundred and a thousand dollars to the price of a new vehicle, and they work amazingly well: current models emit an average of eighty per cent less pollution per mile than was emitted by new cars in 1970. Moreover, fuel-efficiency gains have reduced the typical car's annual gasoline consumption by around three hundred gallons. The fuel savings offset the equipment costs, with the result that for motorists the environmental features on new cars are essentially free of charge.

Nor is this an isolated example. In 1990, when new acid-rain controls were

imposed on power plants, they were expected to cost about seven hundred and fifty dollars per ton of pollution avoided; instead, the price today is a hundred and fifty dollars per ton. Monsanto, the chemical and pharmaceutical giant, has been able to cut toxic-air emissions by ninety per cent without excessive expense, at least in part because savings from the recycling of chemicals have offset the costs of pollution-reduction technology. The installation of high-efficiency commercial-lighting systems—inspired in part by the 1990 version of the Clean Air Act—is saving business tens of millions of dollars a year in expenses.

Solar power and wind power, disappointments in the past, appear to be on the verge of a takeoff. Last fall, the energy conglomerate Enron announced plans to break ground in Nevada for the first unsubsidized, commercial-scale solar-electric array. The array will be built for profit, at a cost competitive with that of fossil-fuelled generators. Though fossil fuels today seem indispensable, they may be supplanted by renewable-energy sources in the near future. Today, the energy economy of the Western world is closer to operation on a renewable-power basis than it was a century ago to operation on the basis of the headlong combustion of petroleum. Should fossil-fuel use wane, in historic terms, as quickly as it arose, the greenhouse problem could almost solve itself.

It's true, of course, that some environmental programs are muddled. For instance, the Endangered Species Act can have the unfair effect of penalizing landholders who discover rare creatures on their property, by prohibiting use of the land. In the main, though, conservation has been an excellent investment for society. Environmental initiatives worked well even in their early years, when they were driven by top-heavy federal edicts. They work even better as new regulations have centered on market mechanisms and voluntary choice; new acid-rain reductions, for example, are being achieved at unexpectedly affordable rates, thanks to a free-market program under which companies trade pollution "allowances" with each other. Western market economies excel at producing what they are asked to produce, and, increasingly, the market is being asked to produce conservation. Environmental reform should be seen as a boon to Western industry, impelling it toward efficiencies that enhance its long-term competitiveness; indeed, environmentalism may be saving the consumer society from itself.

The unmistakable trend toward environmental progress in the West should not delude us into supposing that from now on the global environment will somehow take care of itself. Throughout much of the Third World, basic water sanitation is awful, the air is thick with pollutants, and wildlife loss is rampant. Nor can we afford to be complacent about the domestic environment. Though most indicators in the West are positive, danger signs nevertheless remain, including the decline of the Pacific salmon and the unresolved problem of how to deal with the nuclear detritus of the Cold War. The bewildering array of environmental statutes in the Western world (there are sixteen major laws in the United States alone) needs to be streamlined with a simplified general conservation law that would focus on habitat preservation, for this is likely to be the primary ecological issue of the coming century.

ENVIRONMENTALISM has become a core American political value, close to unassailable even among conservatives. A recent Times Mirror survey is typical. A majority of the respondents agreed with the statement that "government regulation of business usually does more harm than good," yet seventy-eight per cent of the same respondents also think that "this country should do whatever it takes to protect the environment."

Poll numbers of this kind suggest that Speaker Newt Gingrich may come to regret the anti-environmentalist aspects of his Contract with America. In February, House Republicans rushed through a measure designed to weaken anti-pollution regulations by making them very difficult to enforce. The bill prompted Dick Zimmer, of New Jersey, a conservative who is the leading House Republican thinker on regulatory reform, to criticize it for substituting "bumper-sticker slogans" for considered judgments. The House Republican anti-environment initiative—which may fail in the Senate—has become an indiscriminate attack on all conservation rules, including the ones that have proved themselves effective and affordable.

In the nineteen-eighties, Gingrich was a frequent supporter of environmental legislation, but now that he has become Speaker he sees red when he hears green. Recently, for example, he attacked the ripping of asbestos out of walls as an "absurdly irrational" expense and danger for which the Environmental Protection Agency is to blame. This is a convenient rewriting of history, and not just because as a backbencher Gingrich himself cast at least two votes in favor of asbestos removal: since 1990, the Environmental Protection Agency has been urging that most asbestos *not* be ripped out, on the ground that removal can cause more harm than good. Who, then, mandates asbestos removal? State and local governments. That is, the drive to get asbestos out of walls comes from the local officials whom Gingrich seems to revere, while the federal bureaucrats he disdains have been urging moderation.

THE ecological recovery in progress in the West has many heroes: pioneers such as Rachel Carson; environmental activists who carried on the fight; scientists and engineers who have increasingly made clean technology viable; even some business leaders who have become converts to conservation. Political liberalism, which provided the legislative muscle, deserves a large share of the credit, too. Yet liberalism resists the glad tidings of ecological rebound. When liberal intellectuals and Democratic politicians talk about nature in the vocabulary of fashionable defeatism, they sell themselves and their philosophy short.

A telling example of liberal discomfort with environmental optimism came in the 1988 Presidential campaign. Candidate George Bush began his comeback from a deep deficit in the polls with a memorable TV commercial that pronounced the waters of Boston Harbor the dirtiest in America, and pinned the blame on his opponent, Governor Michael Dukakis. After the commercial ran, Dukakis was silent about the harbor, seeming to accede to the charge. Many analysts consider the Boston Harbor spot to have been the turning point in the 1988 campaign. Yet the commercial was shot so as to frame out of the picture a four-billion-dollar complex rising in the background—the largest water-

treatment system in United States history. Its construction had already begun, at regional expense. At the time Bush made his commercial, there was every reason to hope that the new system would clean Boston Harbor rapidly; it has, and the harbor is now safe again for swimming. So why didn't Dukakis respond to Bush immediately by pointing out that a solution was at hand? Because doing so would have required Dukakis to talk about the environment in upbeat tones.

More recently, Carol Browner, the current head of the Environmental Protection Agency, fell victim to the same syndrome. In 1994, Browner, a lifelong liberal Democrat, gave a series of speeches pointing out that there were many signs of environmental progress. She proposed a "common-sense initiative" and revisions that would improve conservation law by adding cost-benefit analysis, simplifying rules for cleanups, and eliminating regulatory overkill. And she did this long before anyone had heard the words "Contract with America." In 1994, Browner's hopeful declararions sank without a trace into the abyss of conventional opinion. Her effort fizzled because Democrats, then still in control of Congress, were put off by the suggestion of environmental good news, and also because White House support was faint.

Liberalism is on the defensive today because, as a philosophy, it concentrates almost entirely on what has failed—about America, about public policy, about daily life. Obviously, there are failures aplenty, but there are successes as well. In the West, environmental protection is the leading postwar triumph of progressive government. Because of this, the notion of impending doomsday is about to expire. We are about to become environmental optimists. ♦

The Town Crier

Joanne Brigham - Editor

P.O. Box 158
17 Park Street, Milo, Maine 04463 Tel. 943-7384

March 25, 1995

Senator William S. Cohen
United States Senate
Washington, D.C. 20510-1901

Dear Senator Cohen:

Thank you for your invitation to attend the field hearing in Bangor on the impact of regulations on business. Unfortunately I will be unable to attend but I thought you might be interested in my small bout with bureaucracy.

I publish a small weekly newspaper in which I carry your column. While typesetting your column on common sense in regulation I was reminded of an incident which happened to me a few years ago.

At the time we were printing a weekly grocery flyer for a local store. We bundled them together to go out in the various city carriers and rural routes in Milo and the surrounding communities. We bundled 156 for use in the post office boxes so that the postal crew only had to stuff one into each post office box in use. One day the Post Master told me that an inspector had been in and from now on I would have to number each of the 156 which were not to leave the postoffice. This was due to a regulation which stated that in any community where there were city carriers (mailmen walking around the center of town dropping off mail at businesses and residences) post office box mail would have to be numbered. Since this was going to cost me time and effort, I asked if there was anything I could do to get around this "regulation". He said it had never been his idea and he couldn't see what possible use it would be to hand number 156 flyers which never leave the postoffice until picked up by the boxholder. He suggested I contact the Customer Relations person in the main Bangor office and gave me the number. I called this individual to explain my problem and was told that the regulation did state that any town with a "city carrier" had to have numbered flyers to go into the postoffice boxes. We discussed this for a time and in frustration I asked, "Well, what is the purpose of the regulation", and he, in equal frustration, responded. "It doesn't have to have a purpose, IT'S A REGULATION". At this point, unable to understand this kind of logic, I hung up on him. When I went to the postoffice and asked for a list of post office boxes currently in use I was told that this information could not be given out. So taking someone tall enough to see the top row of boxes, I went to the lobby of the postoffice and wrote down the numbers of all the boxes which we could see all the way through and thereafter hand numbered 156 flyers each week. The amusing part was that the postal workers still stuffed a flyer in every open box, not being careful that each box got the one numbered for it.

I realize that the Post Office is not exactly "government" anymore but a bureaucrat is still a bureaucrat and his power derives from his precious "regulations".

In Milo we are faced with a project costing over $2 million dollars to comply with the Federal Drinking Water Act. The local water district has asked for a grant and expects to receive some help but what is proposed will still leave the rate payers with a bill of over $1 million. This is on top of the recently completed and federally mandated sewage treatment plant. This water treatment plant will double the local water bills in a community which is property taxed to the limit and whose schools are at the point of asking parents to supply items such as tissues for the classrooms. We all want clean water to drink and Milo residents have been

drinking the water from the Sebec River for over 100 years with no outbreaks of disease. The EPA says we have to have this water filtration system because our source of water is the Sebec River rather than a well. The only source of the necessary amount of water available from a well site is next to the landfill and so cannot be used. It is a shame that the Unfunded Mandates bill did not come in time to help Milo's problem. I understand that we now have to pay $5000 for testing to see if the water that comes out of our sewage treatment plant is clean enough for fish to live in. This is a farce since the runoff from our plant goes into the Piscataquis River which carries so much Tris (flame retarding chemical) from the Guilford Mill in Guilford that it is still unfit to drink when it reaches Howland many miles down river. Howland has had to attach itself to the Lincoln Water District which I'm sure costs them more that they were paying for the river water. Milo tried to get a "hardship" classification but were told by a bureaucrat out of Boston that a "hardship" designation was a water bill over $400 per quarter. They have no concept of what it is to live in rural Maine where college graduates are often lucky to find a job at minimum wage if they wish to remain near their family. Many elderly people live here on their $400 Social Security check. A $400 water/sewer bill would take one month's check out of every three months. Bureaucrats in Boston don't know what hardship is.

I hope these two cases will help the understanding of what federal regulation does to people's lives in Maine.

I thank you for your common sense approach to government. I sincerely hope that you will vote against any attempt at term limits. Maine is and has been ably served by its representation in Washington. I do not want the choice to keep you or a Margaret Chase Smith or an Ed Muskie for as long as we can convince you to stay taken away from us.

I have never felt threatened and frightened by the Congress before but since last fall when the "Contract on America" got elected, I and many people are frightened. The 91 year old lady next door, trying to remain in her trailer home and be independent, is afraid she may lose her food stamps and medicaid which provides her medications that are not covered by Medicare. Having had some substitute teaching experience, I know what lunch time was like before school lunches were provided. One little boy only had a box of Jello gelatin which he ate, a pinch at a time, out of the box. Several children just had bread and margarine. Children should not have to bear the brunt of the economic conditions in Maine's poorer counties or the lack of ability, ambition or morals of their parents. Many people in this area see the Senate as the only defense against a House of Representatives gone wild with power.

Thank you for your recognition that there is a Maine north of Augusta. Not too many politicians notice that we are here.

Sincerely,

Joanne W. Brigham

45 Harding Road
Brunswick, ME 04011

March 25, 1995

Senator William S. Cohen, Chairman
Subcommittee on Oversight of Government Management
432 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Cohen:

I regret that I will be unable to attend the hearing at Bangor City Hall on April 13 "to examine the impact of federal regulations on Maine Citizens, communities and businesses", so I hope you will please consider my comments in this letter in lieu of personal testimony.

I think there is unnecessary duplication in the regulatory process - it is often clumsy and there is overlapping, repetition, and - sometimes - "turf wars", between state and federal agencies or among different federal agencies. Since state environmental standards are supposed to be at least equal to federal standards, we shouldn't need to have EPA or the Army Corps of Engineers sign off on permits that have already passed the state DEP and DMR standards.

We need to get a better chain of command, a clearer division of responsibility without duplication, and a general policy that the federal government doesn't have to do what the state government already does. **But we must have the federal government set minimum standards and ensure that all states at least meet them.** We have made remarkable progress in improving our use of natural resources and environmental health. Don't let the good work be undone!

Federal regulations have, indeed, had a tremendous impact on all of us in Maine. The Androscoggin River, which flows through Brunswick, was once so polluted that its fumes peeled the paint from nearby homes, and it could be smelled before it was seen. Today, we are pleased to have set aside a small area near the river for a public park and are planning for a bike and walkway along the river so that more people can enjoy it. According to a newspaper survey, the view of the river from Route 1 (between Bath and Brunswick) is considered one of the most attractive views in the state. I don't believe that a comparatively poor state, like Maine, could afford to pass the environmental laws necessary to clean up our air and water, if it meant the risk of having other states attract industry by promising them no such restrictions. We need national standards so that states are discouraged from entering into a bidding war to attract industry by placing fewer restrictions on air and water emissions.

One reason for improved water quality in the Androscoggin in Brunswick is that we have a new waste water treatment plant that provides secondary treatment and which decreases the biological oxygen demand near and below the point at which the system discharges into the river. Yes, of course, if has increased the costs of sewage treatment, but the river empties out into the bay and joins some of our most prolific and most endangered "nurseries" for fish and mollusks. In the long run, it's an environmental and an economic gain.

I know you will hear from many citizens who want to have it all - pure air and drinking water, a pleasant and safe environment for home and school, a growing economy with good-paying jobs that provide a benefit package of retirement and health care security - and low taxes. They may expect industry to absorb the costs, miraculously ,without passing them along to the consumer and without reducing the dividend to the stockholder. Or they will agree that taxes will cover the cost - but somehow those taxes will not be paid by the middle class - that is, of course, the majority of <u>us.</u>

I think that's a problem of education - people just have to learn that "there ain't no such thing as a free lunch."

Sincerely,

Ruth S. Benedikt

Levant Landscaping, Inc.

RFD #1, Box 4320
Levant, ME 04456
Tel. (207) 884-7121

Dear Senator Cohen:

Thank you for your letter of March 20 regarding federal regulation and how it effects our business. I'll be brief in the following paragraph describing our last encounter.

We have noticed on PBC the encouragement in aquaculture and seeing as my son-in-law has been interested some time, I encouraged him to start up the business on a small scale. Wanting to do things in a proper manner he called the DEP to ask their help in getting him started this summer. The immediate response was "NO WAY FOR THIS SUMMER". Many in government seem to be good at errecting roadblocks but very incapable of helping our economy grow.

Thank you very much for your concern and efforts. Maybe there is some hope for Maine after all.

Sincerely,

Larry Carr

FRENCHMAN BAY COMPANY

Whale Watching
Nature Cruises
Sailing Cruises
Sightseeing
Lobster Fishing
Private Charters

March 31, 1995

Senator William S. Cohen, Chairman
Subcommittee on Oversight of Government Management
432 Hart Senate Office Building
Washington, DC 20510

RE: Field Hearing, Bangor City Hall, April 13, 1995

Dear Senator Cohen:

Thank-you for your invitation to attend the Field Hearing at Bangor City Hall on April 13, 1995 and the opportunity to comment on the heavy burden of federal regulation. Currently, on my desk with your invitation is:

- a 10 page Survey of Occupational Injuries and Illnesses, 1994 for the U.S. Department of Labor, Bureau of Labor Statistics
- a Vessel Operation Report, ENG Form 3925B for the U.S. Army Corps of Engineers
- an Application for Inspection of U.S. Vessel, Form CG-3752 for the Marine Safety Office of the U.S. Coast Guard
- a USCG Drug and Alcohol Testing MIS Data Collection Form CG-5573 for the Department of Transportation
- an Application for Ship Radio Inspection or Survey, FCC Form 801 for the Federal Communications Commission
- a Special Tax Registration and Return, Form ATF F 5630.5 for the Bureau of Alcohol, Tobacco and Firearms
- a letter from the IRS telling me to resubmit Form 1045 and schedules A, C, E & K-L of Form 1040 which was previously sent to them, on time, by my CPA
- my first draft of a letter to National Marine Fisheries Service to comment on Advance Notice of Proposed Rulemaking, Docket No. 941126-4326; LD. 112294A which is of crucial importance to my company
- a copy of the Field Guidance for Media Response issued by the U.S. Coast Guard, Headquarters COMDT (G-MP-2) regarding the immediate implementation of "Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels" which is of crucial importance to my company
- 200 pages of the Federal Register, January 13, 1994, which describe a complete revision of Coast Guard 46 CFR which regulates the way my boats are built, inspected, operated and maintained
- and numerous letters, notes and phone messages from friends and associates in the passenger vessel industry imploring me to write and comment on various Notices of Proposed Rule Making, Advance Notices of Proposed Rule Making and Supplementary Notices of Proposed Rule Making

I must deal quickly with these items because I know that next week an entirely new set of federal forms, requests, surveys, renewals, applications, fees, and permits will arrive demanding my immediate attention. To illustrate just how many documents are involved, I must obtain and pay fees for five separate Federal Communications Commission licenses in order for my wife to call me aboard my boat on a VHF radio.

1 West Street, P.O. Box 153, Bar Harbor, ME, 04609-0153 ⚓ (207) 288-3322 (8941 FAX)

to obtain Operator Permit, FCC Form 848 (me, a captain)
use FCC Form 756 (Fee Code FAR)
FCC, P.O. Box 358105, Pittsburgh, PA 15251-5105

to obtain Restricted Permit (my wife, ticket office)
use FCC Form 753 (Fee Code PAR)
FCC, Restricted Permit, P.O. Box 358295, Pittsburgh, PA 15251-5295

to obtain Ship Station License, FCC Form 559
use FCC Form 506 (Title III, Part III)
FCC, P.O. Box 1040, Gettysburg, PA 17326

to obtain a Safety Certificate, FCC Form 824
use FCC Form 801 (Fee Code FCS - Title III, Part III)
FCC, P.O. Box 358110, Pittsburgh, PA 15251-5110

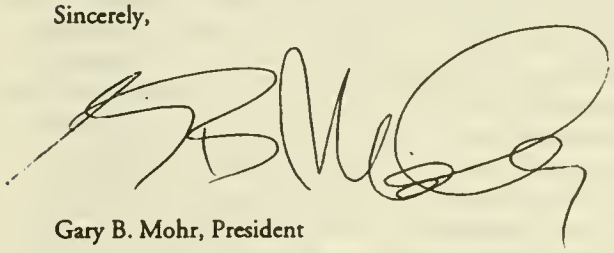
to obtain Land Station License (FCC Form 452L)
use Form FCC 452F
FCC, Marine Coast Service, P.O. Box 371706M, Pittsburgh, PA 15251-7706

Is there any reason the FCC can not regulate my business use of the airwaves under one license?

Further, do my neighbors really benefit as a result of me buying a Tax Stamp from the Bureau of Alcohol, Tobacco and Firearms (ATF Form 5630.5)? Does the U.S. Army Corps of Engineers in Louisiana really need to know exactly where in Frenchman Bay, Maine my sightseeing boat goes, where it stops, how many people are aboard it, during each trip, of each day, of each week, of each month, of each year (ENG Form 3925B)? Are my employees safer as a result of the 10 page Survey of Occupational Injuries and Illnesses I completed in order to communicate to the Department of Labor that we had no injuries or illnesses?

Frankly Senator, my business is so overregulated I can't even pee without the U.S. Coast Guard analyzing the contents of my urine (CG 46 CFR 16.210-260). I believe it will be impossible for you to make meaningful reductions in regulatory burdens until the banking community denies you and your colleagues in Congress the right to incur debt on behalf of our children in order to sustain these bloated, federal bureaucracies. Prove me wrong and you will have a friend forever.

Sincerely,



Gary B. Mohr, President

Ellie MacDougall
Writer/Producer
Route 9A and Meetinghouse Road
Post Office Box 1178
Wells, Maine 04090
207-985-9207

95 APR -4 PM 1:26

Senator William Cohen, Chairman
Subcommittee on Oversight of Government Management
432 Hart Senate Office Building
Washington, DC 20510

March 28, 1995

Dear Senator Cohen:

Thanks for your letter about the hearing in Bangor on the impact of government regulations on businesses and people in Maine. I may not be able to attend, but I have put together this letter with specific instances of how government regulations have negatively impacted my two small businesses.

I operate two sole proprietorships. One is a business as marketing consultant to other companies, and writer (staff and freelance) for a variety of national and regional publications. The second business is a farm producing vegetables, eggs, processed food products and, in a few years, Christmas trees.

The first example of detrimental government regulations concerns the EPA's reformulated gasoline. My business vehicles and much of our farm equipment has averaged a 9% decrease in fuel efficiency since RFG came on the market. This will cost the farm, particularly, a significant amount of money over the year because I have chosen to mechanize my operation as much as possible rather than hire employees. In addition, manufacturers of some of our equipment have informed me of the risk of damage to small motors because of the instability of RFG. Should RFG cause damage to this equipment, it will cost not only money, but impact my ability to earn a living.

The reason for mechanizing rather than hiring leads to a second example of burdensome regulations. The enormous amount of paperwork required when a company takes on employees, plus the often incomprehensible OSHA regulations affecting farming operations with employees, have completely discouraged me from hiring. In addition, in both my farm and consultancy businesses, I have computerized record-keeping and other operations so as to avoid having to hire assistance in these areas, either. I am too busy trying to make a living by doing productive work to spend valuable time doing government-mandated paperwork, nor do I wish to spend my hard-earned money retaining some other firm to do it for me. (Incidentally, even the Federal tax code makes it more rewarding to mechanize than to hire. This is especially unfortunate in a rural border state such as Maine, where there are not many new companies that might be inclined to create jobs to begin with.)

The third area concerns the pending USDA implementation of the Organic Food Protection Act. Again, the paperwork burden on small (sales over $5000)

farms, as well as in-home and on-farm organic food product processors, will be enormous. Even worse, compliance will be left in the hands of a few independent certification agencies who are not geared toward handling small operations. Their high fees for certification and licensing are going to leave me only three alternatives: not labeling my foods as organic even though they meet all certification standards (which removes a significant competitive advantage for my products), going conventional (which is personally repugnant) or shutting my business down. I have written to you, Senator Snowe, Congressman Longley and various members of the House and Senate Agriculture committees and subcommittees explaining this matter in detail and asking that you vote against funding implementation of this legislation.

Fourth, the Army Corps of Engineers and EPA. We have a seasonally fed farm pond on our property which measures about 20' x 30'. Over the years, it has filled in considerably from silt and other run-off. We were told that, if we wanted to bring it back to its orginal banking and get rid of the accumulated silt, we'd be required to obtain the same type of permit as would apply to a developer building a large commercial marina on the Atlantic coast. There was one loophole; we could use hand tools to dig it out. So, my husband and I used brute labor over two years' time and dug out the silt by hand.

These are only a few examples. I could go on for pages. However, I'd like to share with you a story told to me by a farmer friend. He raises turkeys and slaughters them on the farm. The USDA inspector came in one day and told him that he must have water running across the floor of the slaughterhouse at all times so as to prevent a potential health hazard. A few days later, the OSHA inspector came in and told him that having water running was a safety hazard and the floor had to be bone dry.

This makes as much sense as the EPA requiring inefficient reformulated gasoline at a time when our balance of payments is far in the red and we're already too dependent on an unstable part of the world for our oil.

In 1954, when Charles DeGaulle was elected Prime Minister of France, the condition of the government was such that conflicting and burdensome regulations were a normal state of affairs. One of DeGaulle's first actions was to appoint an individual whose sole job was to get all of the various ministries to communicate with each other. I hate to think that we've allowed the bureaucrats to bring us to the same level as post-War France, but it does make me wonder sometimes.

Thanks for trying to tackle this issue -- and for all your hard workto keep Portsmouth Naval Shipyard open. You are one senator to whom I would hate to see term limits apply.

Sincerely,

Ellie MacDougal

207/244-3202
207/244-7178

BEAL'S LOBSTER PIER
H.R. Beal and Son, Inc.
Clark Point Road
Southwest Harbor, Maine 04679
Established 1930

3 April 1995

Senator William S. Cohen, Chairman
Subcommittee on Oversight of Government Management
432 Hart Senate Office Building
Washington, DC 20510

Dear Senator Cohen,

Thank you for the opportunity to prepare written testimony to be included in the official record of the hearing to be held at Bangor City Hall on April 13.

H. R. Beal and Sons, Inc. (Beal's Lobster Pier) is a closely held family corporation located in Southwest Harbor. Started during the 1930's to provide support services such as gasoline, bait and other supplies to commercial fishermen, it has continued in that line while expanding in the area of fuel, supplies and support services to tourists and recreational boaters that visit the Mount Desert Island area during the four month "tourist" season. This type of business expansion is fairly common amongst the Co-ops and other commercial fishing docks along the coast of Maine and I daresay has allowed many of them to remain open as costs increase and operating margins get tighter.

The impact of governmental regulation on our business is not insignificant. We are a small business (one full-time manager, one part-time treasurer, plus hourly-wage labor as required) by any definition and without the management resources to spend interpreting regulations which appears sometimes to be what the bureaucracy expects us to be doing when these regulations come out. However, most often we just figure these regulations out as best we can, hope we don't make a mistake, and live with them.

While we are not going to provide a laundry list of the regulations which seem burdensome to this business, we have had a recent experience with regulations associated with the Federal Clean Air Act (as amended in 1990 and effective October 1, 1993) which dosen't make sense to us and is worth reviewing for the Subcommittee. It has to do with the sale of diesel fuels to commercial fishing and recreational vessels.

The Act provided that special low-sulfur fuels be used by highway motor vehicles. While fishing boats are specifically exempted, the qualifying exempt uses do not include recreational vessels. It should also be mentioned that H. R. Beal and Sons, Inc. has previously been determined by the IRS to be exempt from the collection of the highway excise tax.

Therefore, the way we read this regulation, we are not allowed to sell diesel fuel from our single storage tank and dispenser to recreational vessels if the diesel fuel is exempted from the requirements of the Clean Air Act and from the highway excise tax.

We have reviewed our options and see the following:

...sell no fuel to recreational vessels at any time;

...remove and return to our supplier the exempt fuel at the start of the recreational boating season, thereby forcing us to charge commercial fishermen the highway excise tax. Reverse the process after the recreational boating season.

...Install, at considerable expense, a second underground storage tank and dispenser.

When this regulation first came out we attempted to explain to the IRS what this regulation meant to our business. You can guess what the response was. The prohibition by the IRS against the use of exempt diesel fuel by recreational vessels seems to have diverged from the original intent of the Clean Air Act. Your review of this regulation and others like it are appreciated.

I intend to be present at the April 13 hearing and will be available to provide further information.

Thank you for the opportunity to provide this statement and for your attention.

Sincerely,

H. R. BEAL AND SONS, INC.

Peter Madeira
Treasurer

Enclosures

Internal Revenue Service

Department of the Treasury
Examination Division
P.O. Box 605
Buffalo, NY 14225-0605

Date: December 13, 1993

Attn:

Dear

The Omnibus Budget Reconciliation Act of 1993 included various changes to the excise tax on diesel fuel that are effective January 1, 1994. One significant change is that there will be two types of diesel fuel available, "dyed" (untaxed) and "clear" (taxed).

All clear (undyed) diesel fuel will be taxed at the terminal rack. The federal excise tax will be included in the price you pay. This tax should be included in the price of the diesel fuel that you charge to your customers, except for sales to farmers (for farm use) or to state or local governments (for their exclusive use) provided they have furnished you with an exemption certificate (see enclosed format). If your customers (other than farmers or state or local governments) use clear diesel fuel in a nontaxable use, they will be eligible to file a claim for credit or refund. A farmer or state or local government cannot file a claim for the amount of tax paid. Instead, these claims will be administered by registered ultimate vendors, as discussed later.

Untaxed diesel fuel will be dyed blue (if high sulfur fuel) or red (if low sulfur fuel) at the terminal. The diesel fuel must be destined for a nontaxable use, indelibly dyed, and meet any marking requirements that may be prescribed. For this purpose, nontaxable use generally includes the same uses that are exempt from tax under pre-1994 law, plus certain bus and train uses that are taxed at a reduced rate. However, diesel fuel used in noncommercial boats is no longer exempt from tax. For current exempt uses in highway vehicles (including buses) and boats, please see the enclosed list, Exempt Uses Qualifying to Purchase Dyed Fuel.

Dyed diesel fuel can be purchased tax-free and resold for an exempt use without registration or exemption certificates. Bus and train operators subject to a reduced tax rate must be registered, however, to purchase dyed diesel fuel. Prior to January 1, 1994, you could purchase diesel fuel tax-free and resell it to these companies at the applicable reduced rate. It was your responsibility to pay the Internal Revenue Service the tax and file Form 720. As of January 1, 1994 this is no longer the case. If dyed diesel fuel is sold to these companies, they are now responsible for filing Form 720 and paying the tax. If clear diesel fuel is sold, the full rate of tax will be charged, and they will have to obtain a credit or refund of the allowable portion of the tax.

The following notice must appear on shipping papers, bills of lading, and invoices accompanying sales of dyed diesel fuel: DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE. This must also be posted on any retail pump where dyed diesel fuel is sold. Your company may also be held liable if you know or have reason to know that dyed fuel will not be used for a nontaxable purpose.

Your company is currently registered on Form 637 as an importer, producer, marine retailer, or wholesale distributor of diesel fuel with a "U" suffix. As a transitional rule, your company will be considered a registered ultimate vendor of diesel fuel. This designation allows you to file claims for credit or refund of the tax paid on sales of clear diesel fuel to farmers and state or local governments. You must claim the credit or refund on Form 843, Claim for Refund and Request for Abatement; as an income tax credit on Form 4136, Credit for Federal Tax Paid on Fuels; or as an adjustment on Form 720, Quarterly Federal Excise Tax Return.

Registered ultimate vendors can file claims on Form 843 for any time period for which $200 or more is due, as long as this period is not less than one week. Ultimate vendor refund claims that are not paid within 20 days after being filed will include interest. Claims must include certain information, whether filed on Form 843, Form 4136, or Form 720. Please refer to the enclosure, Specific Information to be Included in a Claim.

There will be a re-registration of your company during 1994 at which time, if you qualify, a new registry number will be assigned. Your current registry number on Form 637 is valid until you are notified by the Internal Revenue Service of the revocation. However, this number will no longer be required to purchase diesel fuel.

Please feel free to call an Excise Tax Specialist at one of the telephone numbers shown above if you have any questions.

Sincerely,

Michael J. Walh

Michael J. Walh
Group Manager

EXEMPT USES QUALIFYING TO PURCHASE DYED FUEL

- Use on a farm for farming ppurposes.
- The exclusive use of a State, any political subdivision of a State, or the District of Columbia.
- Use in a vehicle owned by an aircraft museum.
- The exclusive use of the American Red Cross.
- **Use in a boat employed in--**

  A. The business of commercial fishing;
  B. The business of transporting persons or property for compensation or hire; or
  C. Any other trade or business, unless the boat is used in any activity of a type generally considered to constitute entertainment, amusement or recreation.

- Use in an automobile bus while the bus is engaged in the transportation of students and employees of schools.
- Use in a qualified local bus while the bus is engaged in furnishing (for compensation) intracity passenger land transportation that is available to the general public and is scheduled and along regular routes.
- Use in a highway vehicle that is not registered (and is not required to be registered) for highway use under the laws of any State or foreign country.
- The exclusive use of a nonprofit educational organization.
- Use in a highway vehicle owned by the United States that is not used on the highway.
- Use in a vessel of war of the United States or any foreign nation.

P.O. Box 217
Milford, ME 04461

April 4, 1995

Senator William S. Cohen, Chairman
Subcommittee on Oversight of Government Management
432 Hart Senate Office Building
Washington, DC 20510

Dear Senator Cohen:

I was very pleased to receive your invitation to the meeting that will be held in Bangor, Maine on April 13. Since I will be unable to attend I felt that I should voice my concerns regarding a couple of government agencies and how we as business people are affected.

One agency is the EPA and regulations. We follow rules and regulations as much as possible but many of the EPA rules and regulations are redundant and unnecessary. Two summers ago we received a visit from two very young men who appeared to be interns from this agency. We were "chosen" for an inspection because they were contacting people who had above-ground gas storage facilities by going through the yellow pages in the phone book. This was a bold faced lie as we are not listed in the yellow pages. Their attitudes were extremely impertinent and demanding. We did not have a site plan available for covering a spill (which cost us $600 to develop) and was unnecessary as far as we were concerned since Clean Harbors is readily available to us in case there ever was a problem.

Another small problem is the requirement that we now pay another newly created State Agency to make sure that we have clean water. This costs us another $50.00 per year to make sure our water is clean and tested every year. This is a requirement that we already fulfill every year anyway with another State agency. Talk about redundant!! This was a requirement by the Federal government or so we were told by the State of Maine when they wanted to create this new bureaucracy.

We are constantly being bombarded with licenses, renewal licenses

and new license requirements along with the increased costs for these requirements.

We are a small business employing less than 10 people and the constant requirements for licensing, fees, etc. make it hardly worthwhile to stay in business. Then comes along yet another fear that we are going to have to provide health-care coverage. I myself stay at another full-time job (in addition to helping my husband run our business) that provides health care coverage because we cannot afford to buy coverage for ourselves.

I could go on and on about all the problems that small businesses face, but I guess this is enough.

Sincerely,

Roseann Cochrane

Roseann Cochrane

Acadia Home Care

60 Presque Isle Street
PO Box 330
Fort Fairfield, ME 04742

Phone: (207) 472-4141
1-800-660-4132
Fax: (207) 472-4142

06 April 95

Senator William S. Cohen, Chairman
Subcommittee on Oversight of Government Management
432 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Cohen:

Thank you for the invitation to the field hearing about reforming federal regulations scheduled for April 13, 1995, in Bangor, Maine. Although I will be unable to attend, I appreciate your offer of placing this statement in the official hearing record.

The following example illustrates the problems with the current regulatory process. The home medical equipment industry now partially completes a one page form, a Certificate of Medical Necessity (CMN), that requires a physician's comments and signature verifying the need for each piece of equipment ordered for home care. This form was designed by the Health Care Financing Administration (HCFA) without industry participation. Yet it does not meet HCFA's needs. Rather than correcting the CMN and asking the industry for advice, HCFA turned to another regulatory group, the Durable Medical Equipment Regional Carriers (DMERCs). They propose to add a second page to "educate" the physician on the use of the CMN and a third page for the physician's signature (again) to show her/his understanding of the medical need.

Using the regulatory process HCFA and the DMERCs know so well, we will have to complete three pieces of paper instead of one--without understanding their objectives. The results may meet the needs of the regulators, but are the needs of business and the customers better met?

Redundancy in engineering provides safeguards; in data and paper processing redundancy complicates, frustrates, and adds unnecessary cost. The regulatory process uses the only resource a business has--time. If complying with regulations and participating in the regulatory process truly added value to business, then business would embrace it.

I propose we change the character of the regulatory process from punishment to education, from excluding business to including business, from an adversarial relationship to a cooperative one. Before a new regulation is written, we must first ask whose needs are met. If it is clearly and primarily to the economic and moral value of the consumer, then begin the process.

A current leader within the affected industry should guide the process. The time requirements should result in a product (information) that continuously adds value to the

industry in the eyes of the customers and the industry leaders. We must recognize that the needs of the customers continuously evolve; so the outcome of the process should be adaptable. Most importantly, the process should be brief.

Thank you for your time. If you have any questions, please call me at the office or my home, 207-764-0237.

Sincerely,

Tom Deschaine,
President

April 6, 1995

Senator William S. Cohen, Chairman
Subcommittee on Oversight of Government Management
432 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Cohen:

Thank you for the opportunity to discuss federal regulations and the impacts which such have upon the average American. As you know, I have been intimately involved in the Sears Island cargo port project for more than a dozen years, so I needn't elaborate much further on that subject. Except, to say that your efforts on behalf of this project are universally appreciated.

Rather than point out specific federal regulations, I would ask your indulgence and tell you a true story which I think hi-lights the arrogance of the regulatory agenciues -state and federal. While this incident involved the state DEP, it reflects a haughtiness which is somewhat universal at all levels -there being exceptions, of course.

When I was Searsport's town manager we developed a solid waste transfer station plan which included a large refuse packer truck that was stationary at the town's old landfill site and, when loaded, daily went directly to PERC in Orrington. We selected this approach, rather than a transfer station building to house compaction equipment because of initial cost and the uncertainty of how trash would be handled in the future. In other words, we didn't want to construct a building and then abandon the set-up later as solid waste practices changed.

Maine DEP approved the plan and it has been working fine for some half dozen years. However, I learned, several years after getting the DEP green light, that the town was apparently very fortunate to get the right "man" in DEP to review our application. A friend at that agency advised me that the fellow, whose desk fronted our "man's," was adamant in his opposition to "this stupid plan" and would never have approved the idea. That's little scary. Why should our attempts to comply with government regulations be subject to the transient whims of a single individual? I believe that the Sears Island project is a classic example of authority gone wild.

I suggest that the state legislatures and the U. S. Congress specifically review and approve those rules and regulations created by the various agencies. I sometimes think that these agencies take great license with their duties.

Having said all this, Senator, like most Americans I trust that wiser heads such as yours and many of your colleagues in the senate will trump any attempts to return to the days of unbridled pollution. When I recall how carelessly we handled DDT on the farms where I worked each summer, I shudder to think of the people we probably poisoned in Patten. That small town simply has too many folks with cancer and exotic diseases today.

Thanks again, Senator, and for God's sake kill that absurd term limits legislation. If we are too damned lazy to vote then we get what we deserve, or, as in the case of some of you chaps, a whole lot more than we deserve.

Respectfully,

Donald C. Grant

P.O. Box 54
Searsport, Maine 04974
(207) 548-2613

PIERCE YACHT COMPANY, INC.

APRIL 7, 1995

Senator William S. Cohen. Chairman
Subcommittee on Oversight of Government Management
432 Hart Senate Office Building
Washington, D. C. 20510

Dear Senator Cohen:

After a lengthy period of consternation, and in response to your letter of March 20th., I shall submit the following:

As my letterhead indicates we are in the boat business, and, here in Maine, this is very seasonal. Most of the activity taking place mid-June to Labor Day.

I had the opportunity to hire two service technicians, to work our service vehicles, servicing a charter fleet that was to migrate between Maine and Florida. This would give us additional revenue/employment opportunities by providing year round work. It also required that I obtain V.H.F. radio licenses for these vehicles.

On Monday May 3rd, 1994 I mailed the F.C.C. two identical applications and a check for $140.00. (each license fee = $70.00) (copies attached) On Thursday May 5th, as indicated by the stamp at the top right of each application, the F.C.C. received the applications. (**2 days**)

On June 1st. (26 days later) the F.C.C. dismissed both applications because we submitted one check for two applications! We received their form letter on June 3rd. (copy attached) (**2 days**)

After several phone calls to various F.C.C. offices, starting in Belfast, Maine; then to Boston, Mass.; then to Gettysburg, Pa.; and finally Washington, D.C.,and all I got was one run-around after another and no resolution, I resubmitted my applications, with a separate check for each one, on Saturday, July 16th.. F.C.C. shows a receipt date (as indicated by the second date in the upper right of each application) of Thursday July 21st. (**6 days**)

On August 31st., **41 days later**, the F.C.C. once again dismissed my applications, this time because they had raised the fees, from $70.00 per license to $120.00 each, on July 18th. Two days after I had mailed my applications for the second time. I received this dismissal on September 3rd. (**3 days**)

MEMBER

P.O. Box 236 Boothbay Harbor, Maine 04538

Phone: 207-633-2902 Fax: 207-633-2903

At this juncture the opportunity is lost! Whether or not it can be resurrected is doubtful, as the investors in the project have, like so many others we've seen, moved their money offshore, where they don't have to put up with the total lack of common sense of the U.S. Government. I would like to obtain the licenses though, on the chance that I may resurrect the project.

- In seven phone conversations with F.C.C. employees between June 6th and July 15th not one made any comment or suggestion that the fees were going to increase!
- All the other agencies I've dealt with, usually, give ample warning of changes and use postmarks or original filing dates as their cutoff dates.
- Why the six days in July when all the rest were two and three? And why the forty-one days to respond? Are we living & working on the same planet? This is 1995 not 1895!!!

It becomes very easy to see why the F.C.C. has lost control of the V.H.F. airwaves, as enforcement problems increase in direct proportion to the difficulty in which they make it to comply with the rules. It also becomes very clear that the "Peter Principle" was written for/about the F.C.C. and it's employees!

When are federal employees going to realize who pays their salaries & benefits?

And then there is the I.R.S.! A recent issue of the SSA/IRS REPORTER gave us another hit below the belt!

Occasionally (3 times in the last five years) I.R.S. forms, usually #941 Quarterlies, don't arrive on time or not at all. (I suspect its the P.O.) So, after paying a $253.00 fine once for filing late, I've had to make a photo copy of a form and submit it to avoid the fine. Now, I.R.S. says that if I don't use paper or ink to there specifications I can be fined $50.00/ form. And, they say I've got to request "Publication #1141" to find out what their specifications are!!

And then there is the E.P.A.! About 18 months ago the E.P.A. mandated that everyone use a new "Low Sulfur" diesel fuel. The attached "HOWES" brochure says a lot, but, there is a lot more! At least one death has been blamed on the stuff here in Maine and while standing on a fuel dock in Savannah, Ga. I overheard an exchange between the operator of a U.S. ARMY CORP OF ENGINEERS (another U. S. Govt. agency) workboat captain and the dockmaster of the marina. Capt.: "Do you have the new fuel (meaning low sulfur) or the old?" Dkmstr.: "New, as required. Why ?" Capt.: "I'm afraid I can't buy any more fuel from ya then !" Dkmstr.: "How come ?" Capt.: "We ruined two V12 Gimmys with it last week, and every other engine using it is leaking fuel all over the place. It's got less lube in it and the fuel racks seized up sending metal parts all through the bearings and the engines seized. It shrinks gaskets and seals filling the bilge with fuel. Bad stuff !"

As a taxpayer I was dumbfounded ! A pair of G.M. V-12-71 engines cost $ 50, 000. to $ 70,000. And now, all the trucks on the road are going to be dripping diesel fuel, bilge water is going to be polluting the waters, and we've created a fire hazard in every diesel

powered vessel using the stuff. The only solution is very expensive additives like "HOWES". And who knows what effect that has on the environment ?

Now the E.P.A. comes up with "REFORMULATED GASOLINE". It makes people sick; increases consumption by 20% to 50%; it ruins small engines; (small engines costing individual taxpayers $300. to $10,000. each.) engines start harder, run rough, stall frequently and the stuff costs us more !

You will never convince me or anyone else that my (and everyone else's that I've talked to) truck, burning 20% more gas with a light load and 46% more with a heavy load, is polluting less !!!???

Is there **NO COMMON SENSE LEFT IN WASHINGTON** ? Or has the "Peter Principle" reached its pinnacle there ?

WHEN ARE WE GOING TO STOP DOING THINGS POLITICALLY THAT DO JUST THE OPPOSITE PRACTICALLY ??????????????????

If I read the title of your subcommittee correctly, (what common sense tells me) and if you are allowed to do the job it would seem to dictate, you should be able to take about 50% of the current dissatisfaction with congress away. My most sincere: **THUMBS-UP, BEST OF LUCK** goes out to you. It would seem to be, however noble, a very daunting task.

Your work of the past, with Sam Donaldson of A.B.C., and others, to uncover government waste, has not gone unnoticed, and is much appreciated.

May your future success continue to make us all proud that you are the SENIOR SENATOR FROM MAINE !

Sincerely:

Norman L. Pierce, President
Pierce Yacht Company, Inc.

ASSOCIATED GENERAL CONTRACTORS OF MAINE, INC.

April 11, 1995

Honorable William S. Cohen, Chairman
Subcommittee on Oversight of Government Management
432 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Cohen:

On behalf of the Associated General Contractors of Maine, I am pleased to respond to your letter asking for feedback on how federal regulations impact the Maine construction industry.

There are many regulations that result in construction delays, additional costs, and burdensome paperwork for contractors, however, for the purpose of this letter, I will provide you with some of our most immediate concerns. The following is a list of those issues and our recommendation on how to deal with them.

Wetlands Wetlands regulation has substantially impeded the progress of all phases of construction in the past several years, highway construction in particular. One need look no further at the Sears Island project or the effort to rebuild Route 9 from Bangor to Calais to understand that it only takes one wetland to hold up an entire project. Wetlands regulation is unreasonable and unrealistic. AGC recommends a more streamlined permitting process, a meaningful classification of the value of different wetlands and a realistic definition of wetland. Authority for issuing permits should be given to one agency with no veto authority given to a second agency.

Clean Air Act: Our concern about the Clean Air Act has to do primarily with the control EPA exercises over federal highway funds if a state has not satisfied the agency's requirements to reduce air emissions. We also fail to understand the duplicative nature of forcing companies to submit to burdensome reporting requirements under Title V of the Clean Air Act, when companies are already forced to comply with reporting requirements as part of their state air emissions license. AGC recommends that EPA should be forced to get off the backs of states. Transportation needs should not be held hostage.

Endangered Species Regulations The recent efforts to declare the Atlantic salmon and, most recently, the wood turtle endangered species will result in restrictions on development and construction activities. AGC recommends that cost/benefit analysis, realistic risk assessment and compensation for land value should be undertaken before decisions about habitat protection are made.

Hazardous Waste Construction contractors interested in pursuing the hazardous waste remediation market are precluded from doing so because of the liability associated with the work and the lack of adequate insurance. AGC recommends that clean-up contractors should have their liability limited to that which they have control.

WHITTEN ROAD, POST OFFICE BOX N, AUGUSTA, MAINE 04332-0551
Telephone 207 / 622-4741 **Facsimile 207 / 622-1625**

These are but a few of the regulations in which the Maine Chapter of AGC finds there is more than an ample need for overhaul, however, the above listing is far from inclusive. There are many other laws and rules, such as OSHA, special preference regulations, and Davis-Bacon wage laws which we consider just as burdensome, but our concerns are too detailed for this letter. Therefore, I am attaching a copy of a side-by-side that our national AGC office has drafted that goes into far greater detail about all the federal regulations that impact the construction industry.

We appreciate your efforts in attempting to reform the federal regulatory process, and we stand ready to assist you in any way possible.

Sincerely,

William D. Purington

William D. Purington
Chapter President

WDP:jwb

encl/

ENVIRONMENT

Problem	Impact	Corrective Action Necessary	Administrative Relief Options	Legislative Relief Options
Wetland Permits -- Section 404 of the Clean Water Act has been interpreted to require that a permit be issued by the Army Corps of Engineers before any development activity can take place in a "wetland". Other agencies including EPA become involved in the permitting process	Necessary infrastructure projects and other beneficial development are not built or it takes years for it to be approved thus increasing costs	A more streamlined permitting process, a meaningful classification of the value of different wetlands and a realistic definition of weland are needed. Authority for issuing permits should be given to one agency with no veto authority given to a second agency	Corps should establish strict deadlines for issuing permits	Legislation should allow for classification of wetlands according to their relative environmental value Veto authority over permit decisions should be eliminated
Stormwater Permit Requirements -- Construction activities which disturb 5 acres or more of land must be covered by a Federal NPDES permit for storm water runoff EPA regulations require the contractor to apply for the permit and develop a plan for compliance.	Construction costs more Competition for construction contracts is undermined because bidders prepare cost estimates based on their interpretation of requirements.	Regulations should require the owner to apply for the permit, develop the compliance plan and include plan requirements in project specifications	EPA can reissue regulations to place permit requirement on the appropriate party	Clean Water Act should be ammended to specify which party is responsible for obtaining storm water permits
Extending Stormwater Permit Requirements -- Court has ruled that EPA acted arbitrarily in limiting storm water permit requirements to construction activities disturbing more than 5 acres and has directed EPA to extend requirements to smaller projects.	Extending storm water permit requirements to construction activities disturbing less than five acres will increase the number of sites and contractors impacted by these requirements by ten of thousands. Much of this impact will fall on small businesses and local and state government which must administer the program.	EPA should develop a record which indicates that construction activities which disturb less than 5 acres has a minimal impact on water quality	EPA should not extend the permit requirements beyond the 5 acre limit.	The Clean Water Act should be amended to limit storm water permit requirements to construction activities disturbing more than 5 acres

AGC REGULATORY REFORM RECOMMENDATIONS - 1995

ENVIRONMENT

Problem	Impact	Corrective Action Necessary	Administrative Relief Options	Legislative Relief Options
Endangered Species Regulations -- Identification of plant and animal species which are listed by the Federal government as endangered has resulted in restrictions on development and construction activities	Necessary infrastructure projects and other beneficial development are not built or the cost of construction is increased significantly	Cost/benefit analysis, realistic risk assessment and compensation for land value should be undertaken before decisions concerning habitat protection are made	Cost\benefit analysis and realistic risk assessment should be undertaken by the Fish and Wildlife Agency	Legislation to require cost/benefit analysis, risk assessment and property value compensation is needed.
Indemnification for Hazardous Waste Work -- Construction contractors interested in pursuing the hazardous waste remediation market are precluded from doing so because of liability associated with the work and the lack of adequate insurance	Competition for hazardous waste remediation work is reduced thus increasing costs	Cleanup contractors should have their liability limited to that over which they have control.	EPA should offer indemnification to hazardous waste cleanup contractors as authorized in the Superfund law	Congress should direct EPA to offer indemnification on all cleanup projects Congress should limit contractor liability to ten years
Clean Air Act Amendments -- 1990 Clean Air Act Amendments unfairly expanded the transportation conformity program.	Eliminates federal-aid highway construction projects that do not "conform" to emissions limitations standards. EPA is now looking to go beyond this to include projects that are not federally funded	EPA should be forced to get off the backs of states Transportation needs should not be held hostage.	EPA should relax its enforcement policies.	1. Revise the Amendments and make them more reasonable. 2 Repeal Them entirely.

SAFETY AND HEALTH

Problem	Impact	Corrective Action Necessary	Administrative Relief Options	Legislative Relief Options
OSHA Proposed Ergonomics Standard -- OSHA plans to propose a standard on ergonomics that will affect all industries, however, OSHA does not have the scientific data to justify the standard	The standard would likely be the most costly and burdensome safety and health standard to date	Prevent the standard from being promulgated.	Convince Administration not to act.	Select members of congress could pressure OMB to reject the draft standard until OSHA conducts the appropriate scientific studies.
OSHA's Multi-employer Work Site Enforcement Policy -- allows OSHA to cite and fine general contractors and construction managers for safety and health violations committed by other contractors and subcontractors working on their sites These citations are assessed even when the GC or CM has neither created the hazard nor exposed their own workers to the hazard	GC's and CM's are receiving costly fines	Eliminate OSHA's Multi-employer Work Site Enforcement Policy	Persuade OSHA to change its policy.	Congress could introduce legislation that would prohibit OSHA from issuing citations to GC's and CM's unless they (1) create the hazard and (2) expose their own workers to the hazard.
Section (5) (b) of the Occupational Safety and Health Act of 1970 -- states, "each employee shall comply with the occupational safety and health standards and all rules, regulations, and orders issued pursuant to this act which are applicable to his own actions and conduct", however, there is no provision in the act that gives OSHA the authority to hold workers accountable for violations of the act.	Knowledgeable, properly trained workers continue to violate safety and health standards despite federal laws, state laws and company policies.	Expand the OSH Act to give OSHA the authority to cite and fine workers for violations of the act	None	Congress could introduce legislation that would expand the OSH Act to give OSHA the authority to hold workers accountable for their own misconduct.

SAFETY AND HEALTH

Problem	Impact	Corrective Action Necessary	Administrative Relief Options	Legislative Relief Options
OSHA Press Release Policy -- OSHA frequently provides the media with information on proposed citations and encourages the media to release the information in newspapers and other media sources. All of this is done before the employer is given the opportunity to contest the proposed citations.	It is difficult for companies to get new business in the areas where the premature press releases occur.	OSHA should be prohibited from releasing any information to the media until due process has been achieved.	None, unless OSHA can be convinced this policy has costs to OSHA's reputation too.	Congress should introduce legislation that would prohibit OSHA from releasing information to the press until the employer in question either completes the contest process or pays the fines.
Section (5) (a) (1) of the Occupational Safety and Health Act of 1970 (General Duty Clause) -- gives compliance officers the authority to cite employers for "recognized hazards" that are not addressed by existing OSHA standards. Employers are subjected to inappropriate citations based on subjective decisions made by compliance officers.	Employers are forced to either expend considerable resources to contest the citations or must pay unreasonable fines.	Prohibit use of the General Duty Clause to assess citations. When "recognized hazards" are important enough to warrant citations OSHA should be required to promulgate a standard covering the recognized hazard.	None	Congress could introduce legislation that would prohibit the use of the General Duty Clause to assess citations and require OSHA to promulgate standards for "recognized hazards."
OSHA's Hazard Communication Standard -- is the most frequently cited standard in construction, however, the standard does nothing to enhance construction worker safety and health.	The standard is a paperwork burden requiring written hazard communication programs, collection of hundreds of material safety data sheets, documentation of worker training and other paperwork. Fines for violations are very costly.	Promulgate a Hazard Communication Standard specifically for the construction industry.	None	Congress could pressure the DOL to promulgate a Hazard Communication Standard specific to the construction industry.

AGC REGULATORY REFORM RECOMMENDATIONS - 1995

SAFETY AND HEALTH

Problem	Impact	Corrective Action Necessary	Administrative Relief Options	Legislative Relief Options
OSHA's proposed standard on Indoor Air Quality -- includes "vacant structures under renovation" in its definition of non-industrial work environments. Contractors performing renovation work in vacant buildings would have to apply unnecessary, ventilation engineering controls to the project.	Required engineering controls would be costly	Prevent the standard from becoming applicable to construction.	None	Congress could pressure the DOL to prevent the standard from applying to construction.
OSHA's proposed standard on Abatement Verification -- would require employers to certify in writing that a proposed hazard identified by a compliance officer will be abated immediately. Employers would no longer have the time to contest the proposed citation before abatement must occur	Employers may be forced to expend resources to abate alleged hazards which after appropriate due process may not be classified as hazards.	Prevent the standard from applying to the construction industry.	None	Congress could pressure the DOL to prevent the standard from applying To construction.

LABOR AND EMPLOYMENT

Problem	Impact	Corrective Action Necessary	Administrative Relief Options	Legislative Relief Options
Davis-Bacon Helper Regulations -- In every appropriations bill since FY 1991, Congress has refused to permit the Department of Labor to implement regulations allowing the expanded employment of semi-skilled helpers on federally funded and assisted construction.	The Congressional funding prohibition prevents the Labor Department from implementing regulations that were proposed in 1982 and approved by the D.C. Court of Appeals in 1992. It prevents the Department from recognizing practices common in private construction, a primary objective of the Davis-Bacon Act, and it increases the cost of construction subject to the Act by approximately $600 million/year (CBO estimate)	Congress should lift the funding prohibition and direct the Department to implement the regulations immediately.	None under the current FY 95 funding prohibition.	(a) Lift the current funding prohibition and direct immediate implementation. (b) Amend the Davis-Bacon Act to include the helper regulations. (c) Seek repeal of the Davis-Bacon Act.
Davis-Bacon Site of Work -- The Department of Labor refuses to revise its regulations and enforcement practices to comply with 1991and 1994 D.C. Court of Appeals decisions. These decisions concluded that Davis-Bacon prevailing wage coverage is restricted to the physical site of construction, and does not apply to off-site locations or activities that support that construction.	DOL's refusal to recognize the physical boundaries of prevailing wage coverage in the Act, and as articulated by the Court of Appeals, subjects locations, activities, and personnel miles from the construction site to prevailing wage coverage. This significantly increases the cost of federal construction programs, perpetuates unpredictable and subjective standards for determining coverage, and is contrary to the intent and objectives of the Act.	DOL could promulgate revised regulations that conform to the Court of Appeals decisions.	DOL could initiate the regulatory process by drafting and publish ing the proposed regulations that conform to the Court of Appeals decisions.	(a) Direct the Dept. to initiate the rulemaking immediately. (b) Prohibit the Dept. from spending any funds to apply the site of work regulations in a manner inconsistent with the Court of Appeals decisions. (c) Amend the Davis-Bacon Act to include the coverage limitations of the Court of Appeals decisions. (d) Seek repeal of the Davis-Bacon Act.

LABOR AND EMPLOYMENT

Problem	Impact	Corrective Action Necessary	Administrative Relief Options	Legislative Relief Options
Davis-Bacon Applicability to Private Construction Performed for Lease to the Federal Government -- In May 1994, the Justice Department Office of Legal Counsel (OLC) reversed a June 1988 OLC opinion, and concluded that Davis-Bacon applicability to private construction of facilities to be leased to the Federal government must be determined on a case-by-case basis. The opinion contradicts the 1988 OLC opinion, which concluded that the Act applies only to contracts for construction, not to leases or privately funded construction performed to obtain a federal lease	The opinion permits DOL to apply Davis-Bacon prevailing wage standards to construction initiated by private parties, on private property, with private funds. This directly contradicts the language of the statute which applies only to "contracts for construction" to which the government is a party. This opinion creates subjective standards for determining coverage, and introduces a great deal of uncertainty, confusion, and potential expense into government facility procurement	Reinstate the 1988 OLC opinion that restricts prevailing wage coverage to contracts for construction	(a) DOL could reject the 1994 OLC opinion and announce that the Department will continue to follow the 1988 guidance. (b) DOL could initiate the APA regulatory process. Draft and publish a proposed regulation adopting the 1988 opinion on leases (no regulation currently addresses leases)	(a) Direct the Dept. to initiate the rulemaking process immediately. (b) Prohibit the Dept. from spending any funds to apply prevailing wage coverage in a manner that is inconsistent with the 1988 OLC opinion. (c) Amend the Davis-Bacon Act to include the 1988 OLC opinion guidance on leases. (d) Seek repeal of the Davis-Bacon Act.

AGC REGULATORY REFORM RECOMMENDATIONS - 1995

LABOR AND EMPLOYMENT

Problem	Impact	Corrective Action Necessary	Administrative Relief Options	Legislative Relief Options
Union-Only Public Project Labor Agreements -- Construction labor organizations continue to oversell the Supreme Court's *Boston Harbor* decision seeking union-only public project labor agreements (PLAs), causing public agencies to choose between the political consequences of resisting union pressure, or facing legal challenges to procurement favoritism. The lack of overall policy guidance on direct Federal and Federally assisted construction procurement forces the issue to be decided on a case-by-case basis, rather than as a matter of policy	Union-only favoritism leads to the waste of public construction project funding in administrative and legal overhead, and in the legal and political turmoil PLAs cause PLAs discriminate against employers and employees based on labor policy; waste resources through diminished competition and inefficient agreements; and, ultimately tilt the free market forces that benefit the entire industry	Amend the Federal Acquisition Regulations and OMB Circular A-102 so that direct federal and federally assisted construction contracts are no longer vulnerable to political pressure by unions for procurement favoritism	(a) The Office of Management and Budget could initiate regulatory changes to amend the FAR and Circular A-102 to ban such procurment. (b) The President could issue an Executive Order prohibiting the use of PLAs on federal projects.	
State Apprenticeship Council (SAC) approval of Unilateral Trainee Programs -- Some of the 27 SAC's consistently deny and/or delay approval of open shop training programs.	Open shop contractors are unable to pay apprentice wage rates on federal construction projects.	Eliminate SAC's authority to approve training programs.	Change *Labor Stondards for the Registration of Apprenticeship Programs* to relieve SAC's of training program approval.	Enact legislation preventing the Bureau of Apprenticeship and Training from granting its registration authority to SAC's

LABOR AND EMPLOYMENT

Problem	Impact	Corrective Action Necessary	Administrative Relief Options	Legislative Relief Options
Affirmative Action Regulations -- The regulations requiring contractors engaged in federal or federally assisted construction to make good faith efforts to employ minorities and women minorities are too broad, too subjective and too complex.	These regulations increase the cost of all federal and federally assisted work. They discourage many small firms from even seeking such work. They are so broad, subjective and complex that most firms find it very difficult to comply -- and to document their compliance -- with every requirement. This fact not only frustrates firms but also provides an unwelcome opportunity for the federal government to enforce its related goals as if they were quotas.	The Office of Federal Contract Compliance Programs (OFCCP) should streamline the affirmative action regulations at 41 C.F.R. Parts 6-4, 60-250 and 60-741. The agency should also limit the related requirements for "good faith efforts" to federal and federally assisted projects, and not seek to cover all of the work performed by the contractors engaged in federal or federally assisted construction.	Initiate agency rulemaking on the relevant regulations.	Letters and/or oversight hearings that would encourage rulemaking. Legislation that would supersede the current regulations.
Affirmative Action Goals -- The affirmative action goal for the employment of women in construction is too high, and all too often the goals for the employment of both women and minorities are enforced as if they were quotas.	As do the related regulations, the goals increase the cost of all federal and federally assisted work and they discourage small firms from seeking such work.	The Office of Federal Contract Compliance Programs (OFCCP) should revise the affirmative action regulations at 41 C.F.R. Part 60-4 to provide in clear and unambiguous terms that it is not a violation not to meet the goals. The agency should also apply the goals to the total workforce on a particular project, and not apply them separately to each trade. The agency should also streamline the related regulations (requiring "good faith efforts") to prevent the agency from having so much discretion that it can easily find excuses to cite any firm that fails to meet a particular goal.	Administratively lower the goal for women. Initiate agency rulemaking on the relevant regulations.	Letters and/or oversight hearings that would encourage rulemaking. Legislation that would supersede Executive Order 11246.

LABOR AND EMPLOYMENT

Problem	Impact	Corrective Action Necessary	Administrative Relief Options	Legislative Relief Options
ADR for Employment Disputes -- The Equal Employment Opportunity Commission (EEOC) refuses to declare that it will defer to binding arbitration, and the Federal Arbitration Act (FAA) restricts the federal courts' authority to do so.	Employment litigation has skyrocketed out of control, imposing huge litigation costs on American business, and backlogging the judicial system. Employers are justifiably reluctant to agree to binding arbitration or other private means of resolving employment disputes because the EEOC and the federal courts frequently refuse to honor such agreements, permitting employees to initiate administrative proceedings and/or litigation even if they have agreed to use ADR.	The EEOC should develop and adopt a policy of deferring to binding arbitration and other private means of resolving employment disputes. Congress should amend the Federal Arbitration Act, 9 U.S.C. §1 *et seq.*, to authorize and require the federal courts to take a similar approach.	Initiate agency action to encourage alternative means of resolving employment disputes.	Pass legislation amending the Federal Arbitration Act to authorize and require the federal courts to defer to binding arbitration.
Piecemeal Federal Legislation on Hiring, Firing and Other Employment Practices -- Neither the Executive Branch nor Congress has made any effort to integrate the more than thirty federal laws that regulate some aspect of every employment decision.	The regulatory burden on employers is overwhelming. Not only must they comply with all of the federal laws, but also all of the state and local laws on employment issues. Identifying basic employment practices that will simultaneously satisfy all of these legal requirements has become nearly impossible. The results include lower productivity, less competitiveness, and ultimately, fewer jobs.	The Executive Branch, including but not limited to the Department of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC), must help employers integrate the many employment laws and regulations. The Executive Branch must clarify the relationship between these laws and regulations, and help employers make basic employment decisions in a way that will comply with all of them.	DOL and the EEOC should jointly spearhead a broad effort to develop a uniform set of employment regulations that will, in plain English, tell employers how to comply with all of the federal laws and regulations. These regulations should address employment law issues from the employer's perspective, focusing on hiring, firing, fringe benefits and other functional categories, and not the legal categories that have little relevance to every day decisionmaking.	Letters and/or oversight hearings that would encourage the Executive Branch to integrate the existing requirements. New legislation that would resolve the many conflicts between different federal laws and/or simplify the task of integrating their separate requirements into an employment decisionmaking process that employers can readily comprehend.

LABOR AND EMPLOYMENT

Problem	Impact	Corrective Action Necessary	Administrative Relief Options	Legislative Relief Options
Employment Discrimination "Testers" -- The Equal Employment Opportunity Commission (EEOC) has endorsed the use of "testers" -- who pretend to be qualified and interested job applicants -- to generate claims of employment discrimination..	"Testers" fabricate wholly unnecessary but enormously expensive employment litigation. Their activities damage the competitiveness of American business, and waste government resources that should be used to seek relief for real victims of unlawful employment practices	The EEOC should withdraw its current policy on "tester standing," and should actively encourage the courts to reject the claims that such persons fabricate.	Develop and adopt new agency policy guidance on "testers."	Letters and/or oversight hearings that would encourage agency action. Legislation that would clarify that "testers" lack "standing" to claim employment discrimination.
Uniform Guidelines on Employee Selection Procedures -- These largely incomprehensible regulations make it enormously expensive for employers to justify any employment policies or practices that have a disproportionately adverse impact on minorities or women.	The regulations cause many employers to shy away from employment policies or practices that would make them more competitive, for fear of employment litigation. They also cause at least some employers to resort to quotas. Most employers cannot possibly satisfy the many complex requirements for "validation "	The EEOC should withdraw the current regulations and then clarify that the law requires no more than evidence that policies or procedures having an adverse impact on minorities or women are job-related and consistent with business necessity.	Initiate agency rulemaking on the relevant regulations and the larger questions that they purport to address.	Letters and/or oversight hearings that would encourage rulemaking. Legislation that would clarify that "validation" in accord with the Uniform Guidelines on Employee Selection Procedures is not required of all policies and practices having an adverse impact on minorities or women. Hearings on whether the federal government should continue to outlaw anything less than intentional discrimination.

AGENCY MARKET ISSUES

Problem	Impact	Corrective Action Necessary	Administrative Relief Options	Legislative Relief Options
Crumb Rubber -- A Provision within ISTEA mandates the inclusion of crumb rubber in asphalt pavements for federal-aid highways.	Greatly increases costs, reduces performance and unnecessarily dictates to states a specific method of disposing of old tires	Although annual moratoriums on the provision have been included in Appropriations Bills a complete repeal of the mandate should occur		Repeal the provision.
Criminal Records -- The GSA has proposed that all contractors performing contracts for GSA must submit to GSA a copy of the criminal records for every employee, for each state he or she has resided in for the past 10 years. The possible intent is to protect government property from theft or damage from maintenance and janitorial contractors	Creates a massive paperwork burden for construction contractors and subcontractors who may have hundreds of employees working on one jobsite, sometimes for only a day or two. It also creates a large burden on state and local governments who must furnish the criminal records to contractors.	GSA should not apply the proposed regulation (52.237-71, Qualifications of Employees) to construction contractors since any theft or damage occurring at a construction site will be covered by the contractors liability insurance and poses no financial risk to the government	GSA can opt to exclude construction contractors from the proposed rule	Appropriations Committees can limit GSA funding so that it may not implement the rule
DAWIA -- The Corps of Engineers has implemented the Defense Acquisition Workforce Improvement Act (DAWIA) by removing the District Engineers from the position of Contracting Officer and transferring that responsibility to procurement professionals	Places individuals with little or no construction experience in the position of contracting officers on construction projects, increasing disputes and claims, promoting litigation and ultimately increasing construction costs	The Corps should reinstate District Engineers as contracting officers	Corps could rescind the policy that removed the District Engineers from the position of contracting officer and provide the procurement education and training mandated by DAWIA to the District Engineers.	Amend DAWIA to exempt the Corps from its requirements.
Hours of Service -- Certain construction industry employees are unfairly subjected to rigorous hours of service regulations which were intended for long-haul carriers.	Limits productivity of material and supply vehicle operators who actually drive for a short period of their work day	Federal Highway Administration (FHWA) should issue a waiver for construction related employees whose actual driving time is less than 50 percent of their duty time	FHWA Administrator has authority to grant waiver.	Direct FHWA to issue a waiver

AGC REGULATORY REFORM RECOMMENDATIONS - 1995

PROCUREMENT

Problem	Impact	Corrective Action Necessary	Administrative Relief Options	Legislative Relief Options
Miller Act Alternative Payment -- The Federal Acquisition Streamlining Act of 1994 raised the Miller Act threshold from $25,000 to $100,000 but provided that the FAR shall provide "alternatives to payment bonds as payment protections" for contract between the $25,000 and $100,000 levels. The alternatives available to contracting officers will significantly affect general contractors. Subcontractor organizations reportedly will be lobbying for direct pay, escrow accounts, and letters of credit. Payment bonds are also an option	The Act's provision for contracts between $25,000 and $100,000 creates an excessively complicated contract administration	Payment bonds are the preferred option	Draft regulations have been circulated for interagency comment. AGC will be notified when they are to be published for public comment and will be commenting on the proposed rules	Regulation is required as a result of legislation. Legislatively removing the provision is another option.
Mistakes in Bids -- The Federal Acquisition Regulation allows bidders to adjust bids after bid opening to correct mistakes.	Fosters manipulation of the competitive bid system by allowing a low bidder who claims an error the opportunity to correct the bid upward, but not above, the second low bidder.	Amend Section 14.406, Mistakes in Bids, so that bidders may not correct bids after bid opening. Bidders who claim an honest error should be able to withdraw their bids, and have their bid guarantees returned to them	Since this is not mandated by statute, the FAR Council can initiate the amendment by opening a FAR case.	Undertake legislation that directs the FAR Council to amend the FAR, eliminating the possibility that contractors may correct an error after bid opening.

AGC REGULATORY REFORM RECOMMENDATIONS - 1995

PROCUREMENT

Problem	Impact	Corrective Action Necessary	Administrative Relief Options	Legislative Relief Options
Latent Defects -- The FAR offer no protection to contractors against allegations of latent defects. Currently administrative set-off's from current projects are possible, threatening a contractor's economic viability. There is no applicable statute of repose to bar stale claims	The government may at any time attempt to revoke the previous acceptance of a contract and direct a contractor to perform the remedial work necessary to repair an alleged defect. This unilateral direction can be given without the government having first established its entitlement to direct such repair under the latent defect theory and without acknowledgement of any credit due the contractor for past beneficial use of the project or component	The FAR should be modified to provide independent investigation and evaluation of alleged latent defects. The government's recovery should take into consideration the expected life of the defective item and the actual useful life received by the government. Ideally, a statute of repose should bar claims after a reasonable period of time (state statutes range from 4 to 15 years) so that contractors are not required to defend stale claims and so that the government's maintenance and/or use for the intended purpose are not factors	The rewriting of the FAR is an opportunity to have stronger language. Language can also be addressed and negotiated on an agency-by-agency basis.	A statute of repose could be attempted, but would require some receptivity and cooperation from administrative agencies

SPECIAL PREFERENCE

Problem	Impact	Corrective Action Necessary	Administrative Relief Options	Legislative Relief Options
Federal Highway Administration's DBE Program -- Having failed to grow or develop DBEs into strong construction contractors, the 10% goal for DBE participation in federal-aid highway construction and the related regulations continue to disregard the real number and capacity of qualified DBEs in the highway sector of the construction industry. The goals and regulations are exclusively focused on the dollar volume of the work awarded to such firms, and completely disregard the continuing need to increase their basic business strengths, including but not limited to their equity position.	General contractors normally perform 90% of all federal-aid highway construction with their own employees, because such work is capital intensive, and the general contractors have already invested in the necessary equipment. It would therefore be difficult for such contractors to meeting a 10% goal for DBE participation even if there were a large number of qualified DBEs. And there is not. The DBE program has done little to increase the number or capacity of such firms. In addition, many of the program restrictions intended to keep out less than legitimate firms have had the ironic effect of making it more difficult -- and sometimes impossible -- for general contractors to provide meaningful business assistance to DBEs.	The Federal Highway Administration (FHWA) should revise 49 C.F.R. §23.64(e), which now puts an excessive burden on the states and other grant recipients to justify annual goals of less than 10%. FHWA should completely eliminate the requirement that the governor personally sign a state's request for an annual goal of leass than 10%. FHWA should also revise the other regulations in 49 C.F.R. Part 23 to clarify and make objective the requirement for "good faith efforts," and to establish a process for the real growth and development of DBEs.	Withdraw the regulatory proposal that FHWA published two years ago, at 57 Fed Reg. 58288 (1992), and initiate a new agency rulemaking.	Letters and/or oversight hearing that will encourage a new agency rulemaking. Legislation that will directly address the fundamental program problems.

SPECIAL PREFERENCE

Problem	Impact	Corrective Action Necessary	Administrative Relief Options	Legislative Relief Options
8(a) Program Presumption that Minorities are Disadvantaged -- The Small Business Administration (SBA) wrongly presumes that minorities are disadvantaged, within the meaning and for the purposes of the 8(a) set-aside program.	This presumption artificially inflates the number of businesses that the SBA can certify as disadvantaged, and in turn, the number of 8(a) set-asides. It also discriminates against the non-minority firms that Congress intended to have equal access to the 8(a) program. The resulting increase in the cost of federal procurement is something that Congress never authorized.	The SBA should rescind 13 C.F.R. §124.105, which presumes that minorities are disadvantaged, contrary to the plain language and legislative history of the Small Business Act, 15 U.S.C. §637(a).	Declare that the current regulation is invalid and unenforceable and initiate agency action to rescind it.	Letters and/or oversight hearings that would encourage SBA to take appropriate action. Seek repeal of the presumption.
Aggregate Goals for SDB Procurement --The federal procurement goals for small disadvantaged businesses (SDB) continue to apply to each agency's total procurement, without regard to levels of SDB participation in specific industry categories.	The federal agencies set aside a disproportionate number of the contracts in the construction industry, in order to compensate for the small number of SDBs in other industries.	Congress should amend 15 U.S.C. §644 (Section 15 of the Small Business Act) and 10 U.S.C. § 2323 (the "1207 Program") to apply the federal goals for SDB participation on an industry-by-industry basis.	None	New legislation
Disproportionate SDB Set-Asides -- The Department of Defense (DOD) has yet to establish procedures for citizens to complain that a specific "contacting activity" has set aside a disproportionate number of the contracts in a particular industry category exclusively for small disadvantaged businesses (SDBs).	Individual "contracting activities" remain free to set aside most if not all of their contracts in any industry category, as necessary for their agency superiors to meet a national goal.	DOD (in conjunction with the Coast Guard and the National Aeronautics and Space Administration) should issue regulations and establish related procedures for implementing 10 U.S.C. §2323 (g)(2).	Initiate agency rulemaking on the relevant provision.	Letters and/or oversight hearings that would encourage rulemaking. Legislation that would itself establish the necessary procedures.

SPECIAL PREFERENCE

Problem	Impact	Corrective Action Necessary	Administrative Relief Options	Legislative Relief Options
"Rule-of-Two" for SDB Set-Asides -- The Department of Defense (DOD) continues to set aside contracts exclusively for small disadvantaged businesses (SDBs) whenever it can expect that at least two SDBs will bid for the work.	Any two SDBs can monopolize all of the defense work in a particular area simply by agreeing to bid for that work. In the process, they can greatly increase the cost of defense construction. They can not only damage but also destroy non-SDBs that have performed such work in the past.	DOD should revise §219.502-72 of the DFARS to eliminate the "rule of two" and should substitute a rule requiring a careful analysis of the impact that any set-aside would have on non-SDBs	Initiate agency rulemaking on the relevant provision.	Letters and/or oversight hearings that would encourage rulemaking. Legislation that would itself eliminate the "rule of two."
Repetitive SDB Set-Asides -- For the exclusive benefit of small disadvantaged businesses, the Department of Defense (DOD) continues to set aside all contracts for work that it has successfully set aside in the past.	This approach perpetuates all set asides for the indefinite future. Once DOD succeeds in setting aside a particular contract, it will automatically set aside all future contracts for the same type of work. This increases the cost of defense construction, and it can literally destroy non-SDBs	DOD should delete §219.501(g) of the DFARS. DOD should also adopt a regulations that expressly forbids consecutive contracts for the same type of work from being set aside.	Initiate agency rulemaking on the relevant provision	Letters and/or oversight hearings that would encourage rulemaking. Legislation that would itself eliminate repetitive set-asides.

Community Service Telephone Co.

33 MAIN ST., P.O. BOX 400
WINTHROP, MAINE 04364
TEL: (207) 377-9911
FAX: (207) 377-9969

N.J. SAVARD, PRESIDENT

April 11, 1995

SENATOR WILLIAM S COHEN CHAIRMAN
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT
432 HART SENATE OFFICE BUILDING
WASHINGTON DC 20510

Dear Senator Cohen:

I am writing in response to your letter of March 20, 1995 soliciting comments regarding personal experience which we have had with the federal regulatory process.

I would like to address two immediate areas of concern which we as a company would like to see included in the official hearing record.

The first has to do with the sale of reformulated gasoline in the State of Maine. It has been our experience that the use of reformulated gasoline has decreased mileage by 15% to 25%. In fact, in a recent personal experience, Normand Savard, the President of Community Service Telephone Company, drove to Van Buren from Winthrop in a 1985 standard Toyota Camry. Driving with reformulated gas, he achieved an average of 32.29 miles per gallon from Winthrop to Van Buren and back to Mars Hill. In Mars Hill he filled his tank with 11 gallons of regular unleaded gas (which left approximately 3 gallons of reformulated gas mixed in). Upon arrival in Winthrop in refilling his tank, he noted that he had achieved 40.79 miles per gallon with the non-reformulated gas, an increase of 25%! In addition, there is an apparent impact on engine performance through diminished power which is both an annoyance and a safety hazard.

Cost factors aside, of equal concern are the uncertainties regarding the negative health effects of reformulated gasoline. Complaints of dizziness and headaches are not uncommon, and subsequently we feel that Maine should join the ranks of other states (such as California, Delaware and New Jersey) in either abolishing reformulated gasoline or conducting more extensive studies regarding its side effects.

The second area of concern involves our experience with OSHA in response to an investigation conducted regarding a recent fatality, the first in the Company's ninety-three year history. Although the Company's safety record prior to this accident was impeccable, its' OSHA 200 log the envy of almost any Company, and the Company was one of only 5 Maine companies to be

presented a Safety Award by the Maine Safety Council in 1991, the OSHA investigation process was an unpalatable one. Although we feel that we were able to provide sufficient data to indicate the safe environment which prevailed, we were cited and fined $4,250 for this accident. Further, it was not until a settlement conference in Boston (the third meeting with OSHA) that certain alleged statements from our employees were presented to us that contradicted our stand. Apparently, some employees who were interviewed by the OSHA investigator the day following the tragedy, stated that they did not recall being instructed by CST on safe distance relative to working near live power lines. Had we known of this in the initial meeting, we might have been able to provide information necessary to counter such statements. In fact, once we became aware of this, we were able to track down specific training records of each employee (sample attached) that clearly illustrate the inaccuracy of such statements. Unfortunately, we experienced difficulty in locating this due to a change in Plant management in December of 1994, which caused confusion in retrieving such records from the former managers' computer. To our chagrin, this was discovered after the case with OSHA had been settled.

In any event, we agreed to settle the case, in spite of feeling quite strongly that the citation and fine were not justified. However, to pursue this further would have required legal assistance, and the cost of such to pursue a principle would be difficult to justify to customers of the Company.

As it was, the process was onerous, it appeared that OSHA was determined that a citation and fine must be issued, and generally smacked of the inflexibility and overall tunnel-vision one can expect in dealing with a federal regulatory agency.

Should you have any questions or if we can assist you in any way, please contact me.

Cordially,

Peter B. Chavonelle
Human Resources Manager

PBC/gst

cc: Normand Savard

Outside Plant Training

Date	Employee	Seminar	Sponsor	Location	Duration	Saf. Rel.?	Saf. Mtg?
5/31/94	Lori Merrifield	Fire Safety	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
6/28/94	Lori Merrifield	Emergency Situations	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
7/13/94	Lori Merrifield	Seat Belts	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
8/9/94	Lori Merrifield	Pole Testing	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
5/15/91	Lowell Cooley, Jr.	CPR Certification	Winthrop Ambulance	Winthrop ME	1 Day	Yes	No
9/10/91	Lowell Cooley, Jr.	Pole Testing & Precautions	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
9/14/91	Lowell Cooley, Jr.	Backing Up Study/Quiz	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
9/23/91	Lowell Cooley, Jr.	Who are we? Study/Quiz	Community Service Telephone	Winthrop ME	2 Hours	No	No
9/25/91	Lowell Cooley, Jr.	ABC Fault Location Study/Quiz	Community Service Telephone	Winthrop ME	8 HRS	No	No
9/25/91	Lowell Cooley, Jr.	Emp Manual Safety Section Quiz	Community Service Telephone	Winthrop ME	4 Hours	Yes	No
10/9/91	Lowell Cooley, Jr.	Home and Work Safety Ideas	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
11/21/91	Lowell Cooley, Jr.	NESC Study/Quiz	Community Service Telephone	Winthrop ME	3 Hours	Yes	No
11/22/91	Lowell Cooley, Jr.	Office Safety	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
12/31/91	Lowell Cooley, Jr.	Back Care & Injury Prevention	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
1/27/92	Lowell Cooley, Jr.	Safety Team Exercises	Community Service Telephone	Winthrop ME	2 HRS	Yes	Yes
1/28/92	Lowell Cooley, Jr.	Traffic Control	Community Service Telephone	Winthrop ME	1 Hour	Yes	Yes
1/31/92	Lowell Cooley, Jr.	Respiratory Protection	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
4/17/92	Lowell Cooley, Jr.	Pay Station Maintenance	Community Service Telephone	Winthrop ME	2 Hours	No	No
4/21/92	Lowell Cooley, Jr.	1992 Plant Seminar	Telephone Assoc New England	North Conway NH	3 Days	No	No
4/29/92	Lowell Cooley, Jr.	Fall Protection-Working Aloft	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
6/9/92	Lowell Cooley, Jr.	Heat Disorders	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
11/8/92	Lowell Cooley, Jr.	Electrical Safety	Central Maine Power Co	Winthrop ME	1 Hour	Yes	Yes
11/20/92	Lowell Cooley, Jr.	Safety Practices & Awareness	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
2/4/93	Lowell Cooley, Jr.	Holding Productive Meetings	Community Service Telephone	Winthrop ME	1 Hour	No	No
2/23/93	Lowell Cooley, Jr.	Rescue Tripod Operation	Eastern Fire and Safety	Winthrop ME	30 Min	Yes	No
3/18/93	Lowell Cooley, Jr.	Effective Discussion Skills	Community Service Telephone	Winthrop ME	1 Hour	No	No
3/19/93	Lowell Cooley, Jr.	CPR Certification	American Red Cross	Skowhegan ME	4 Hours	Yes	No
3/19/93	Lowell Cooley, Jr.	First Aid Certification	American Red Cross	Skowhegan ME	4 Hours	Yes	No
3/25/93	Lowell Cooley, Jr.	Confined Space Entry	Community Service Telephone	Winthrop ME	1 Hour	Yes	Yes
4/13/93	Lowell Cooley, Jr.	1993 Plant Seminar	Telephone Assoc New England	North Conway NH	3 Days	No	No
5/26/93	Lowell Cooley, Jr.	Pole Testing & Precautions	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
6/18/93	Lowell Cooley, Jr.	Respiratory Protection	Community Service Telephone	Winthrop ME	1 Hour	Yes	Yes
6/21/93	Lowell Cooley, Jr.	The Manager as Coach	Community Service Telephone	Winthrop ME	6 Hours	No	No
7/18/93	Lowell Cooley, Jr.	Seat Belts	Community Service Telephone	Winthrop ME	1 Hour	Yes	Yes
8/31/93	Lowell Cooley, Jr.	Summertime Safety	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
9/10/93	Lowell Cooley, Jr.	Pole Top Rescue	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
9/24/93	Lowell Cooley, Jr.	Bloodborne Pathogens	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
10/29/93	Lowell Cooley, Jr.	Hunting Safety	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes

Date	Employee	Seminar	Sponsor	Location	Duration	Saf. Rel.?	Saf. Mtg?
12/9/93	Lowell Cooley, Jr.	Christmas Tree Safety	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
12/20/93	Lowell Cooley, Jr.	Annual Recap of Safety Mtgs	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
1/19/94	Lowell Cooley, Jr.	Group Problem Resolution	Community Service Telephone	Winthrop ME	3 HRS	No	No
1/24/94	Lowell Cooley, Jr.	Defensive Driving	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
3/8/94	Lowell Cooley, Jr.	Traffic Control	Community Service Telephone	Winthrop ME	1 Hour	Yes	Yes
3/16/94	Lowell Cooley, Jr.	Warmups for the Workplace	Run For Your Life	Winthrop ME	1 Hour	Yes	Yes
3/22/94	Lowell Cooley, Jr.	How to lead a safety meeting	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
4/21/94	Lowell Cooley, Jr.	Dressing for Conditions	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
4/22/94	Lowell Cooley, Jr.	Hazardous Communications	Community Service Telephone	Winthrop ME	2 Hours	Yes	Yes
5/31/94	Lowell Cooley, Jr.	Fire Safety	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
6/28/94	Lowell Cooley, Jr.	Emergency Situations	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
7/13/94	Lowell Cooley, Jr.	Seat Belts	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
6/28/90	Michael Akers	Backing Up Study/Quiz	Community Service Telephone	Winthrop ME	1 Hour	Yes	No
7/2/90	Michael Akers	Emp Manual Safety Section Quiz	Community Service Telephone	Winthrop ME	4 Hours	Yes	No
8/27/90	Michael Akers	NESC Study/Quiz	Community Service Telephone	Winthrop ME	3 Hours	Yes	No
9/10/90	Michael Akers	CST Construction Tariffs	Community Service Telephone	Winthrop ME	1 Day	No	No
9/14/90	Michael Akers	Hearing Protection	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
11/30/90	Michael Akers	Good Attitudes - Importance	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
3/29/91	Michael Akers	Hand and Arm Safety	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
4/9/91	Michael Akers	Customer Service	Elliott Berv Associates	Winthrop ME	1 Day	No	No
6/10/91	Michael Akers	Safety Team Exercises	Community Service Telephone	Winthrop ME	2 HRS	Yes	Yes
7/29/91	Michael Akers	MS-DOS	Community Service Telephone	Winthrop ME	4 Hours	No	No
8/2/91	Michael Akers	Who are we? Study/Quiz	Community Service Telephone	Winthrop ME	2 Hours	No	No
8/30/91	Michael Akers	Head Protection	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
9/10/91	Michael Akers	Pole Testing & Precautions	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
9/14/91	Michael Akers	Backing Up Study/Quiz	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
10/9/91	Michael Akers	Home and Work Safety Ideas	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
11/22/91	Michael Akers	Office Safety	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
12/31/91	Michael Akers	Back Care & Injury Prevention	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
1/27/92	Michael Akers	Safety Team Exercises	Community Service Telephone	Winthrop ME	2 HRS	Yes	Yes
1/28/92	Michael Akers	Traffic Control	Community Service Telephone	Winthrop ME	1 Hour	Yes	Yes
1/31/92	Michael Akers	Respiratory Protection	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
4/28/92	Michael Akers	Video Display Terminal Safety	Community Service Telephone	Winthrop ME	30 Min	Yes	No
6/9/92	Michael Akers	Heat Disorders	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
11/20/92	Michael Akers	Safety Practices & Awareness	Community Service Telephone	Winthrop ME	30 Min	Yes	Yes
2/4/93	Michael Akers	Holding Productive Meetings	Community Service Telephone	Winthrop ME	1 Hour	No	No
2/25/93	Michael Akers	Office Safety, VDT'S	Community Service Telephone	Winthrop ME	1 Hour	Yes	Yes
3/11/93	Michael Akers	Effective Discussion Skills	Community Service Telephone	Winthrop ME	1 Hour	No	No

Maine Petroleum Association
A Division of the American Petroleum Institute

Patricia W. Aho
Executive Director

April 13, 1995

Senator William S. Cohen, Chairman
Subcommittee on Oversight of Government Management
432 Hart Senate Office Building
Washington, DC 20510

Dear Senator Cohen:

Enclosed please find our statement for the record regarding the federal regulatory process. I appreciate your seeking our input in regards to this critical issue facing Congress.

Again, thank you very much for your consideration of our concerns with the federal regulatory process and please do not hesitate to contact us if you have questions regarding our statement or desire further information from us.

Best regards,

Patricia W. Aho
Executive Director

PWA/jng

Enclosure

45 Memorial Circle • Augusta, Maine 04330
(207) 622-5881 • FAX (207) 622-3938

Maine Petroleum Association

A Division of the American Petroleum Institute

Patricia W. Aho
Executive Director

STATEMENT FOR THE RECORD
SUBMITTED BY THE MAINE PETROLEUM ASSOCIATION
BEFORE THE SENATE GOVERNMENT AFFAIRS COMMITTEE
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT
BANGOR, MAINE
APRIL 13, 1995

Thank you for your invitation to comment to you regarding the Maine Petroleum Association's interest in the April 13th public hearing in Bangor on the impact on Federal regulations. Of course, the Maine Petroleum Association agrees that regulations should be based upon sound scientific evidence and proper regulatory decisions to protect human health and the environment.

The Maine Petroleum Association is a member of the Alliance for Reasonable Regulation, a broad-based organization with more than 1,600 trade associations, and individual companies, large and small, from across the country. Collectively, ARR members represent more than one-half of our country's economy and jobs. ARR is committed to the passage of regulatory reform and risk policy legislation in the 104th Congress.

Maine Petroleum supports ARR's mission to establish reforms which will:

- establish rational risk reduction priorities;
- perform sound, realistic risk assessment that are fully characterized, clearly explained, and peer-reviewed;
- ensure that regulatory decisions reflect the best available scientific information;
- evaluate the costs and benefits of major rules; and
- structure major rules with a view to maximizing flexibility, cost-effectiveness, and social benefits.

We live in a world of limited resources and competing needs. Yet Federal regulatory agencies do not have a system for making rational, well-informed decisions as to how our limited resources can be most effectively allocated to maximize health, safety, and environmental protection. Today, regulatory decisions are made without a clear understanding of relative risks and the balance between benefits and costs. At the state level, we are active participants in the Environmental Priorities Project which seeks to establish such a balance between risks, benefits, and costs.

45 Memorial Circle • Augusta, Maine 04330
(207) 622-5881 • FAX (207) 622-3938

Several bills have been introduced in this Congress to reform the regulatory process. The Maine Petroleum Association supports the approach in S343 because it contains all the major provisions needed to address the goals as expressed in the ARR mission. The case for S343, is made stronger by the enormous costs that Federal regulations impose on our economy and society. Regulatory decisions cost Americans more than $500 billion annually - or about $5,900 per family per year. Though these costs are not directly visible to the public, they are passed on through lower wages, higher prices, increased state and local taxes, and, ultimately, slower economic growth and fewer jobs nationwide.

According to the General Accounting Office, as of 1990, U.S. industry and government were spending about $115 billion per year, equivalent to about 2.1% of the Gross National Product (GNP). EPA estimates the percent of the Gross National Product devoted to the cost of environmental compliance will reach 2.8% by the year 2000. The U.S. Bureau of the Census recently found that productivity in three major industry sectors (oil refineries, paper mills, and steel mills) was reduced by the equivalent of $3 or $4 for each dollar spent on pollution abatement during the years of 1979-1985.

The urgent need for reasonable regulatory reform as provided in various Senate legislation such as S343, introduced by Senator Robert Dole, is clear. The Maine Petroleum Association stands firmly behind legislative efforts, such as S343, to reform the regulatory process.

We support S343 because it deals directly with three important concepts - applicability to current law, petition process, and judicial review.

Applicability to Current Law:

Most parties agree that it would be good public policy to require an agency, before promulgating a final rule under future laws, to determine that the potential benefits justify the costs. As the Senate considers regulatory reform legislation, however, much debate has occurred over whether an agency should be required to make such a determination for existing regulations, that is ongoing and future rulemakings, under current law. Clearly, if it makes sense prospectively, it makes the same sense *retrospectively*.

The Dole bill, S343, recognizes this and provides that the cost-benefit decision factors of the bill supplant the factors provided in the enabling statute. The substantive statutory standards would remain intact, and the results of the cost-benefit analysis would be used as an additional benchmark for evaluating regulatory alternatives.

Petition Process:

S343 contains a petition process for re-examining and revising existing final regulations. A petition process can promote agency accountability by providing a remedy where agencies fail to revise rules that have been shown to be too costly or inflexible. The burden would be on the petitioner to present data showing that revision of the rule would likely result in substantial reduction in compliance costs while affording an equivalent level of protection. The American people are fed up with the current regulatory burdens, and a process to examine these existing rules is necessary.

Judicial Review:

Normal judicial review - the type currently provided in the Administrative Procedures Act (APA) must apply to the requirements of risk and regulatory reform legislation or the requirements are meaningless. S343 provides for such review.

The risk assessments, risk characterizations and cost-benefit analyses prepared by agencies would be included in the record for the final agency actions they support and would be included in the record for the final agency actions they support and they would be reviewable only as a part of the record as a whole to determine the validity of the final agency actions.

No undue delays would result. The doctrines governing granting of a stay, prejudicial error, finality, ripeness and standing would all apply.

To assist you in your assessment of burdensome regulations, duplication or regulatory programs, and regulatory inconsistencies, we have included an attachment outlining regulations which exemplify the need for regulatory reform. These regulations are ones which our other Maine industries such as timber, pulp and paper, construction, and small business manufacturing would also find problematic. These regulatory impacts are not unique to the petroleum sector.

Passage of regulatory reform legislation in Congress will provide a historic opportunity to vote for reasonable regulatory reform that will result in smarter regulations with a reasonable relationship between costs and benefits. We strongly urge you to support S343 and look forward to working with you and your staff in any Conference on various regulatory reform legislation.

Thank you for your consideration of this information.

ATTACHMENT
EXAMPLES OF REGULATIONS FROM MAINE PETROLEUM ASSOCIATION TO SUBSTANTIATE THE NEED TO REFORM THE REGULATORY PROCESS

General background on increase of regulations, rules and recordkeeping:
Thomas Hopkins of the Rochester Institute of Technology calculates that in (1991 dollars) Americans will spend more than $600 billion complying with regulations this year. Nearly 130,000 bureaucrats make their living devising and enforcing rules and regulations, up more than 20% since 1985. This has helped create a morass of paperwork, which takes entrepreneurial companies 1 billion hours annually to complete, according to the Small Business Administration. The Federal Register published 64,914 pages of regulations last year, compared with 34,812 in 1986.

General background on the petroleum industry:
The petroleum industry currently spends $8 billion per year on environmental quality and protection. This current $8 billion spent to protect the environment exceeds the $7.6 billion in expenditures for U.S. oil exploration (1991 dollars). It is estimated that annualized new and potential environmental costs to the petroleum industry likely range between $17 and $25 billion by the end of the 1990s and will escalate to $26-33 billion in the year 2000.

Beyond the existing regulations under the Clean Air Act Amendments of 1990 (CAA), Clean Water Act (CWA), OPA, Energy Policy Act (EPAct), Resource, Conservation and Recovery Act (RCRA), and Superfund (CERCLA) laws, API member companies have promoted voluntary efforts to recycle used oil in 48 states - including 35 used oil collection centers in Maine. Petroleum companies have adopted many voluntary industry standards to reduce air toxics, reduce hazards in manufacturing operations, and conduct research to protect groundwater.

Regulations where costs outweigh benefits:

- **Clean Air Act of 1990's Maximum Achievable Control Technology (MACT) standards**

EPA is required to issue MACT technology standards for new and existing sources of hazardous air pollutant (HAP) emissions. The standard cannot be less stringent than the average emission limitation achieved by the best performing 12% of the existing sources (the MACT "floor"). Industry is concerned that the cost of MACT regulations have little commensurate benefit. Costs could exceed $730 million initially and $90 million annually.

- **Clean Air Act Section 112(r) Risk Management Programs**

The regulation would require facilities to develop and implement risk management programs (RMP) to protect the public and environment from catastrophic accidental releases of toxic or flammable substances. Facilities covered by the requirement are those that manufacture, process, use, store, or otherwise handle substances listed by EPA. The rule, as proposed would apply to an astonishingly large number of

facilities, and costs to the petroleum industry would significantly exceed the benefits to the environment and to the public. The EPA estimates that 145,000 facilities would be covered but industry believes that **1.1 million** oil and gas production facilities plus **190,000 gasoline service stations** would be subject to the regulation at an estimated cost of **$10 billion to $15 billion.** EPA's own regulatory impact analysis estimates the costs to be $3.7 billion and the benefits to be roughly the economic equivalent.

- **The Clean Air Act Amendments of 1990's Operating Permits Rule**

The Title V permit rule would adversely affect industry in several ways. The proposed changes to the operating flexibility and alternative operating scenario provisions of the existing final rule threaten operating flexibility and create additional potential liabilities for industrial sources - in fact, small businesses would be more likely to be in non-compliance than petroleum facilities. Small manufacturers which would have to obtain permits would face tremendous permitting costs - often in the tens of thousands of dollars and hundreds of man-hours to prepare for permit application preparation.

Duplicative or conflicting environmental/safety programs:

- **Regulation of Marine Vessel Loading Emissions**

Section 183 (f) of The Clean Air Act of 1990 requires EPA to regulate emissions of volatile organic compounds (VOCs) from marine vessel loading facilities. However, Section 112 (d) already regulates these sources generally. EPA's proposed regulations to these two statutory sections would require costly emissions control equipment within timeframes which are unworkable due to unavailability of design firms and contractors. EPA estimates that emission reductions for each metric ton of hazardous air pollutants will cost $99,000 per ton of emission reduction. However, EPA has been unable to quantify any risk-reduction benefits. Industry predicts the costs to be **at least $1 billion to $1.5 billion in total expenditures.**

PHYSICIANS FOR SOCIAL RESPONSIBILITY

Maine Chapter

April 13, 1995

Senator William S. Cohen, Chairman
Subcommittee on Oversight of Government Management
432 Hart Senate Office Building
Washington, DC 20510

Dear Mr. Chairman:

Thank you for the opportunity to submit a written statement to the Senate Subcommittee on Oversight of Government Management to examine the impact of federal regulations on the citizens of Maine. Although, we are disappointed that more environmental and environmental health organizations were not invited to participate as witnesses, we appreciate your effort to solicit written comments from Maine constituents on this important matter.

As residents of Maine, as physicians, and as fathers, we understand the need for public health protections, especially for vulnerable populations. A fundamental purpose of all federal regulations is to protect the health of the most vulnerable members of society, such as children, the elderly, and persons with weakened immune systems who are the least able to take responsibility for their own protection.

To quote your own words in your open invitation letter to the April 13 field hearing, you stated that "...federal regulations affect almost every aspect of our daily lives. There are regulations that affect the food we eat, the water we drink, and the air we breath. The American people rightly expect the government to regulate in order to protect public health and safety. Achieving a cleaner environment...are goals we share." Your comments reflect the bi-partisan support for a series of laws passed over 25 years that protect the environment and public health. Such laws include the Clean Water Act, the Clean Air Act, and the Safe Drinking Water Act - all of which form the cornerstone of our nation's commitment to preserving a safe and healthy environment for ourselves and future generations.

As taxpayers, we know that unnecessary and inappropriate regulation will ultimately have a financial impact on our families. We support, as we believe you do, the development of innovative and more efficient government policies for protecting the public's health and the environment.

P.O. Box 1771 • PORTLAND, MAINE 04104 (207) 772-0680

However, the proposed "regulatory reform" legislation currently pending before Congress puts the special interests of business and industry before the interest of the public's health. It creates unnecessary burdens for federal agencies that would adversely affect the public health and safety of your Maine constituency. To demonstrate the dangers of pending "regulatory reform" legislation, we have presented in the following text why cost-benefit analysis and risk assessments can not be accepted as stand alone procedures in government regulation.

Cost-benefit analysis and risk assessments are useful tools; however, the requirements currently being proposed in pending "regulatory reform" legislation are far more detailed than necessary. These new requirements will place extraordinary paperwork burdens on federal agencies and will make it almost impossible for agencies to issue any regulation to protect the public's health, even in cases of clear need. Cost-benefit analysis and risk assessment focus only on the amount of damage to health and the environment while ignoring many other dimensions of risk that are psychologically and ethically important. Such neglected dimensions include whether the risk is undertaken voluntarily, whether the nature of the risk is catastrophic or particularly dreaded, and whether the benefits of the activities that expose people to risk are fairly shared with those who bear the risk.

Proposed legislation before Congress would apply cost-benefit analysis to virtually every regulation. The Congressional Budget Office estimates that it would cost $20 million a year in addition to the cost of hiring close to 1000 EPA staffers, simply to comply with such requirements. Requiring cost-benefit analysis for every rule would create unnecessary regulatory burdens for federal agencies by bogging down the government in endless paperwork. Furthermore, cost-benefit analysis is an inadequate tool to apply universally in governmental agencies. Serious concerns surround the counting and quantifying of benefits, such as capturing benefits that often accrue well after the costs have been incurred. How do you put a price on the benefit of not having your child brain-damaged by lead poisoning or not being sickened by tainted food or water? Cost-benefit analysis can never properly assess the value of human life. Yet proposed "regulatory reform" legislation would have the public believe this is true. Attempts to put a price tag on life, as does proposed "regulatory reform" legislation currently pending before Congress, will penalize the public's health and safety. And although risk assessments are useful tools that can provide valuable information to regulators, they should not be made the only basis for decision making.

Risk assessment is not a precise science. The science involved in conducting risk assessments on environmental health can be ambivalent. For not only does the state of scientific understanding change, but the environment itself changes. Risk assessments start with built-in uncertainties that may result in findings that are different by several orders of magnitude. For example, in determining the risk of a chemical, an agency may conduct research that focuses on estimates on inhalation because of an assumption that most common forms of ingestion for the general population is breathing the chemical. The result may show a low risk, but in actuality a greater

risk could be inherent to particular subsectors of the general population who have greater exposure to the particular chemical. Averaging risk across whole populations may yield very different interpretations of data than if averaged across subsectors that face high exposure. The result in the above example for an agency, may not be to regulate even though certain high exposure communities were not identified or even targeted in the risk assessment.

The issue of risk assessment has very practical consequences. Will the government offer protection to all Americans from pesticide residues in food, or will it protect only the person who eats the theoretically average diet? Will toxic pollution be measured in low-income and people of color communities in order to assess the need to regulate or will the measure be based on the average community? Questions such as these, display how risk assessments could fail to protect the health and safety of all Americans. Moreover, risk assessment of chemicals in the environment account only for direct effects: cancers, birth defects, and premature births. Chemicals such as dioxin, PCB, and pesticides may have even greater indirect affects, but are not accounted for in current risk assessments. Risk assessments must include ecological impacts to fully assess public health risk. Risk assessments based merely upon direct effects are limited. Such short-sighted calculations serve only industrial interests by allowing industrial polluters to block environmental health protections by suing governmental agencies on the grounds of "unnecessary regulatory burdens."

Current cost-benefit analysis and risk assessment language in proposed "regulatory reform" legislation before Congress is a polluter's dream and a bureaucratic nightmare. Special interest lawyers could spend years blocking efforts to protect our children from lead, mercury, dioxin, and other health hazards. These special interests will use the fine print in the proposed "regulatory reform" bills to destroy 25 years of environmental protections and the progress that we have made to improve the health of all Americans. This is in direct contrast to the "Contract with America" and its pledge to "protect our kids." Unlike physicians who take a Hippocratic oath to "do no harm," it seems that Congress has taken a hypocritical oath to do all it can to roll back the environmental safeguards that have helped improve the health of our nation's children.

As a practicing health professionals, we are extremely concerned about the back room access corporate interests seems to have to the newly elected Congress. Health professionals work every day treating children with health problems, such as asthma, lead poisoning, learning disabilities, and other diseases, related to or caused by environmental health hazards. Physicians and other public health professionals, rather than those with special economic interests, should be making decisions about how to better protect the health of our children and our nation. This nation has come along way from the belching smokestacks, filthy waterways, and oozing toxic waste dumps of the 1960s and 70s, during which hundreds of Americans died or became hospitalized because the air was unbreathable and the water undrinkable. As a result, current environmental protections were enacted to protect the public from industry pollutants.

Industry should pay when their actions endanger the public's health and safety. The American public has safer and cleaner air and waterways because of current environmental health protections and it seems insidious to tamper with the process that has helped to protect our nation's children. Instead of celebrating our triumph in combating environmental health hazards, Congress is forcing the American public to perform triage in an attempt to protect 25 years of environmental safeguards that have helped improve the health of all Americans.

In closing, we would agree with a fellow PSR member, Philip Landrigan, M.D., M.Sc.,who recently said "[i]t is impossible to create a risk free environment, but we must minimize risks to public health and, for the sake of our children and their children protect our natural environment. The financial resources of government are limited and the federal deficit must be reduced. We should not, however, balance the deficit with an accounting that asks future generations to pay the price of today's economic prosperity in the currency of disease, death and a despoiled environment."

Sincerely,

Daniel Oppenheim, M.D.
President
Physicians for Social Responsibility/Maine Chapter

Peter Wilk MD

Peter Wilk, M.D.
National President
Physicians for Social Responsibility

TOWN OF HOULTON
MAINE 04730

95 [illegible] 1:40

ADMINISTRATION
21 Water Street
(207) 532-7111
FAX (207) 532-1305

AMBULANCE
95 Military Street
532-1320

ASSESSING
21 Water Street
532-7114

CEMETERY
County Road
532-1329

CIVIL EMERGENCY PREPAREDNESS
21 Water Street
532-1300

COMMUNITY DEVELOPMENT
21 Water Street
532-7113

FIRE
95 Military Street
532-1320

HEALTH & SOCIAL SERVICES
21 Water Street
532-7111

INTERNATIONAL AIRPORT
532-6223

PARKS & RECREATION
Main Street
532-1310

POLICE
95 Military Street
532-2287

PUBLIC WORKS
Town Garage
Bangor Road
532-1325

April 14, 1995

Senator William S. Cohen
United States Senate
Washington, D.C. 20510-1901

Dear Senator Cohen:

Thank you for the opportunity to comment on the heavy burden of federal regulation.

We enjoy the Quality of Life that Maine has to offer and believe that to be one of our major marketing attractions for Houlton where our *Vision 2020* statement calls for **GROWTH in a Healthy Community**.

However, we also saw how quickly a lumber company just folded tent and refused to reconsider expansion of their plant in our region from the application of the Clean Air Act regulations.

It does not matter who did what or how that became a problem. The point is the way the law was written which creates the "Washington knows best" top-down driven regulations which allows such an opportunity for failure to develop in the first place.

The "Motor-Voter" law is another perfect example of noble causes failing to recognize local wisdom.

As implemented, every time people came to the General Assistance office they had to first be given the motor-voter Q&A drill and fill out the necessary paperwork.

This procedure had to be done every time they came in, even if they had only returned later in the day with the additional information that was needed to support their request for General Assistance, which is the reason they were there in the first place.

You must imagine the frustration of both the applicant and the administrator who saw how foolish this made government look and what a waste of time this "Washington knows best" law cost.

Fortunately, Maine's Secretary of State, Bill Diamond, aggressively sought and got relief for Maine because we already had a very progressive voter registration program in place, thanks to local wisdom.

Maybe these couple of examples will serve to help in your deliberations; thank you again for asking.

Sincerely,

Allan K. Bean
Town Manager

AKB/cjo

U.S. Public Interest Research Group
National Association of State PIRGs

April 14, 1995

Senator William S. Cohen, Chairman
Subcommittee on Oversight of Government Management
432 Hart Senate Office Building
Washington, DC 20510

Dear Senator Cohen,

Thank you for the invitation to attend the field hearing held on April 13, 1995, at Bangor City Hall, for the Senate Subcommittee on Oversight of Government Management to examine regulatory reform.

Since I was unable to attend the hearing, please include the following testimony into the written record on behalf of our 2,792 active members of U.S.PIRG in Maine.

U.S.PIRG is a non-profit, non-partisan research and advocacy organization which has worked for years to protect consumer health and safety, and the environment.

U.S. PIRG concurs with the more extensive testimony submitted by Everett Carson of the Natural Resources Council of Maine and would like to make the following additional points.

We all want our government to run more efficiently and more effectively. It is also important for Congress to review existing regulations and make improvements where needed, but unfortunately that is not what is currently being proposed. We are in opposition to S.219, S.343, S.333, S.291, and other so called regulatory reform bills because, instead of making improvements, these bills threaten to rollback existing environmental, consumer, and occupational health and safety laws.

Although we were encouraged by your rejection of some of the most destructive provisions of the House bill, what remains in S.291 and the other proposed regulatory reform packages would still gut environmental and consumer laws rather than provide real and meaningful reform.

U.S. PIRG 218 D Street, SE Washington, DC 20003 (202) 546-9707

In particular, legislation with super mandate provisions, judicial review, and reach back petition mechanisms, would all add millions of dollars and years of regulatory red tape to the rule making process. Agencies could not protect the public if such bills were to become law. Instead, these agencies would be reduced to responding to frivolous industry law suits and to the absurd risk assessment provisions of the bills. The proposed legislation would also create more government bureaucracy, which we feel, is taking the role of government in the wrong direction.

Our members have told us repeatedly they want safe drinking water, clean air, and safe work places, they do not want to wonder, or actually get sick from, such things as e.coli in their meat or cryptosporidium in their drinking water.

U.S. PIRG is a member of Citizens for Sensible Safeguards, a broad based coalition ranging from consumer, environmental, and public health officials, to the religious community. We have united together because we do not believe that when people voted for change this past November they wanted to rollback 25 years of environmental and public health protections.

Senator Cohen, we urge you, and members of the Senate not to waste taxpayer dollars and put citizens of Maine at risk. And we urge you to address any specific problems with regulations with specific solutions, not the current broad attack brush being applied.

Next week this country celebrates the 25th Anniversary of Earth Day. We have a lot to celebrate, our rivers are cleaner, our air is more breathable, and many species on the verge of extinction are making a comeback, but these changes did not happen by chance, they came about because of protections provided for by our laws. We need to celebrate our progress by learning from our tremendous regulatory successes, and make improvements, not by abandoning the process, but by addressing specific failures.

In 1993, 2.8 billion pounds of toxic chemicals were dumped into our ecosystem; the chemical DDT, a carcinogen banned two decades ago, is still showing up in the environment; and the Center for Disease Control and Prevention reports that 900 Americans die annually from their drinking water. There is plenty of room to improve the quality of the environment we live in, lets not turn back the clock now.

Thank you for your time, we look forward to working with you in the upcoming months.

Sincerely,

Jeanne Bassett

Jeanne Bassett
New England Field Coordinator

TOWN OF LEVANT
P.O. Box 220 ★ Levant, Maine 04456 ★ 207-884-7660 ★ FAX 207-884-7237

Earla J. Parks
Town Manager

April 18, 1995

Senator William S. Cohen, Chairman
Subcommittee on Oversight of Government Management
432 Hart Senate Office Building
Washington, DC 20510

Dear Senator Cohen:

Regrettably, the elected officials for the Town of Levant were unable to attend the field hearing in Bangor on Thursday, April 13, 1995. However, they asked me to write you of their concerns.

Collectively the Board believes the biggest problem with Federal Regulations, whether it is the Clean Air Act; Clean Water Act; or Drinking Water Act, etc., to be that the Federal Government always reaches too far! They not only set goals but specify how those goals must be reached without regard to cost or consequence to municipalities.

Seldom do the regulations allow for the myriad of variable conditions that exists between geographic locations and local governments spread nation wide. The federal government needs to recognize that local governments need for shoulder room in which to work. Local governments want to meet the standard but want to do so without being required to spend hard earned dollars meeting standards that are absolutely unnecessary and sometimes ridiculous to their particular community.

Let the Federal Government continue to set standards in these areas that protect us globally, but let the engineers, the elected officials, and the public decide now to meet those goals in ways that are reasonable, practical and cost effective for their particular communities.

Levant agrees the "times" demand we do not lower standards for clean air, water, wetlands, etc. But allow local government and industry the flexibility and innovations to reach all environmental standards without detriment to their community through adverse cost of totally unrealistic mandates.

Sincerely,

Earla J. Parks
Town Manager

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